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South Carolina Legislative Audit Council

Report to the General Assembly

June 1994

1994 Sunset Reviews



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Authorized by §2-15-10 *et seq.* of the South Carolina Code of Laws, the Legislative Audit Council, created in 1975, reviews the operations of state agencies, investigates fiscal matters as required, and provides information to assist the General Assembly. Some audits are conducted at the request of groups of legislators who have questions about potential problems in state agencies or programs; other audits are performed as a result of statutory mandate.

The Legislative Audit Council is composed of three public members, one of whom must be a practicing certified or licensed public accountant, and six General Assembly members who serve ex officio.

Audits by the Legislative Audit Council conform to generally accepted government auditing standards as set forth by the Comptroller General of the United States.

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LAC

1994 Sunset Reviews

June 1994

s required by the sunset law (§1-20-10 *et seq.* of the South Carolina Code of Laws), the LAC reviewed the laws and operations of nine licensing boards that were scheduled to terminate on June 30, 1995. We concluded that regulation of these occupations and professions benefits the public and should be continued. However, we identified areas where improvements are needed in board statutes and operations.

As of February 1994, all the boards we reviewed became part of the Department of Labor, Licensing and Regulation (LLR). We have summarized our results for each board below.

Manufactured Housing Board

Although we found that the regulation of manufacturers and dealers benefits the public and should be continued, we concluded that continued regulation of manufacturer representatives and salesmen is not necessary and should be discontinued. Also, five southeastern states license the installers of manufactured housing, and the General Assembly may wish to consider requiring the licensure of installers.

The Manufactured Housing Board has corrected several problems noted in our 1988 sunset review. However, the board continued to generate less revenue than necessary to regulate the manufactured housing industry. Also, the board has not complied with a 1990 provision that requires all manufacturer and dealer applicants to furnish proof of financial responsibility prior to licensure.

Real Estate Commission

We recommend the continued regulation of the real estate profession. However, we identified several areas where recommendations from our 1988 audit of the commission have not been implemented. The commission still does not have a policies and procedures manual and has not ensured that its examinations meet professional testing standards.

We also reaffirmed our 1988 recommendations about needed changes in the commission's statutes. The Vacation

Time Sharing Plans Act needs to be reviewed and updated. Also, we recommend that the General Assembly consider eliminating the Vacation Time Sharing Recovery Fund and study the need for a general recovery fund to cover all real estate claims.

Residential Builders Commission

We concluded that regulation of the residential building profession benefits the public and should be continued. However, we found that the regulation of residential specialty contractors (such as electricians, painters, and plumbers) lacks the means to protect the consumer and should be discontinued. Specialty contractors do not have to meet minimum qualifications to become registered, and certain specialty trades are already regulated by the Licensing Board for Contractors and the South Carolina Municipal Association.

The board's examination was developed by commission staff and builders, and may not meet professional testing standards. Also, the board has not complied with a statutory requirement that all complaints come before the board for disposal.

Licensing Board for Contractors

We concluded that regulation of the contracting profession benefits the public and should be continued. In general, the board is administered efficiently. We identified some provisions of board statutes that are restrictive and could impose added costs to consumers.

Statutory provisions that require burglar alarm contractors to pass a fire alarm examination could prevent qualified applicants from being licensed. State laws that require contractors to be licensed before bidding on a project are in conflict with some federal regulations and may restrict competition.

Also, the board does not have the authority to impose penalties less severe than license revocation. Other boards, such as the Residential Builders Commission, may reprimand, suspend, or refuse to renew a license.

Board of Registration for Professional Engineers and Land Surveyors

We found that the regulation of the engineering and land surveying professions benefits the public and should be continued. In general, the board is administered efficiently.

However, we identified provisions of the 1993 statute establishing an associate level licensure of professional engineers which limit the practice of these engineers and could restrict competition within the profession. Also, the requirement that engineering and land surveying corporations obtain certificates of authorization and pay renewal fees does not serve a regulatory function and could be discontinued.

Environmental Certification Board

The regulation of water and wastewater operators and well drillers benefits the public and should be continued. However, there is no longer a need to regulate percolation test technicians.

We found that the board has been operating a certification program for swimming pool operators without statutory authority. Also, the board needs to improve its handling of complaints. It has not followed up on orders forwarded from DHEC regarding violations of well drillers.

Also, the board's requirement that an operator be employed prior to certification could be restrictive and should be discontinued.

Real Estate Appraisers Board

The Real Estate Appraisers Board was established in 1991 to license appraisers in accordance with the requirements of federal law. We concluded that regulation of real estate appraisers benefits the public and should be continued. However, one category of licensure, "registered appraiser," may not be necessary and could cause confusion for consumers.

The board has not investigated and resolved complaints in a timely manner. In 18 of 25 (72%) complaints reviewed, there was no documentation that the board completed complaint investigations. These complaints remained open an average of 325 days without resolution. Also, the board has not adopted written policies and procedures for complaints or other administrative functions.

Board of Long Term Health Care Administrators

We found that the regulation of nursing home administrators and community residential care facility administrators benefits the public and should be continued. The board needs to take action to ensure that complaint investigations are carried out when information on complaints is received from DHEC and the ombudsman's program of the Governor's office.

We also found problems with the administration of the licensing process. We identified applicants for community residential care facility administrator licenses who stated on their applications that they had been convicted of a crime other than a traffic violation. There was no evidence that the board inquired into the cases prior to licensure. Also, although high school graduation is required for licensure as a community residential care facility administrator, the board has not required verification of graduation.

Board of Registration for Geologists

We found that the regulation of geologists benefits the public and should be continued. We followed up on problems noted in our 1991 audit of the board and found that some improvements had been made.

However, the board still did not have appropriate management controls over its administrative services contract. The board continued to pay its contracted administrator for excess hours without appropriate documentation. The board has not implemented proper controls over the payment of board expenditures by allowing the contractor's staff to sign all vouchers, including those payable to themselves.

Also, by waiving renewal registration fees for board members, the board has not complied with state law.

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Agency responses to the audit begin on page 117.



Report to the General Assembly

Manufactured Housing Board

Real Estate Commission

Residential Builders Commission

Licensing Board for Contractors

**Board of Registration for Professional Engineers and
Land Surveyors**

Environmental Certification Board

Real Estate Appraisers Board

Board of Long Term Health Care Administrators

Board of Registration for Geologists

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Report Introduction

The sunset law (§1-20-10 *et seq.* of the South Carolina Code of Laws) provides for the termination of specified boards, programs and commissions on predetermined dates unless their continued existence is justified. The law gives the Legislative Audit Council responsibility for evaluating the performance of the agencies scheduled for termination. Since 1979, we have annually published sunset reviews of boards scheduled for termination. Because the General Assembly has generally reauthorized boards for six-year periods, many boards are now in their third cycle of the sunset process.

Pursuant to the sunset law, this year we have reviewed the laws and operations of nine South Carolina professional and occupational licensing boards. This report contains the reviews of nine boards scheduled to terminate on June 30, 1995. (Our sunset review of the Public Service Commission is published in a separate report.) We recommend the continuation of all nine boards.

- Manufactured Housing Board
- Real Estate Commission
- Residential Builders Commission
- Licensing Board for Contractors
- Board of Registration for Professional Engineers and Land Surveyors
- Environmental Certification Board
- Real Estate Appraisers Board
- Board of Long Term Health Care Administrators
- Board of Registration for Geologists

Government Reorganization

As of February 1994, 37 professional and occupational licensing agencies (POLAs) came under the jurisdiction of the Department of Labor, Licensing and Regulation (LLR). These boards, which include the nine scheduled for sunset review, are no longer separate agencies but have been consolidated into a single department.

While each POLA has retained its authority as a professional or occupational licensing entity, LLR now has responsibility for the administration of the former agencies. For this reason we have taken a consolidated approach to reporting the results of this year's sunset reviews. Instead of publishing a separate report for each individual board, we have combined our findings into a single narrative organized by audit objective.

How to Use This Report

The audit objectives for sunset reviews are established in state law (§1-20-10). The law specifies eight issues that we are to consider before recommending the continuation of each board. Our report is organized by the eight audit objectives. All the audit findings that deal with a particular issue, such as complaint handling or efficiency of administration, appear together.

Because many readers of the report may be familiar with or interested in specific boards or professions regulated, we have also provided a way to find the information relevant to a single board. We have included a sunset review summary for each of the nine individual boards. In this section, the reader will find background, a recommendation for reauthorization, and an index to all the findings that discuss the operations of that individual board.

Audit Objectives

The eight statutory objectives for the sunset reviews with references to our findings in those areas are listed as follows:

- (1) Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review (see p. 27).
- (2) Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review (see p. 39).
- (3) Determine the overall costs, including manpower, of the agency under review (see p. 47).
- (4) Evaluate the efficiency of the administration of the programs or functions of the agency under review (see p. 53).
- (5) Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates (see p. 63).

- (6) Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity (see p. 71).
- (7) Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed (see p. 75).
- (8) Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations (see p. 85).

Scope and Methodology

We reviewed operations of the boards relevant to the eight sunset issues. Our period of review was FY 88-89 through FY 92-93 for those boards which were last reviewed in the 1988 sunset audits. For two boards that had sunset reviews in 1991, the State Board of Registration for Geologists and the Board of Long Term Health Care Administrators, we reviewed operations from FY 91-92 through FY 92-93. The Real Estate Appraisers Board was created in 1991, and we reviewed its operations in FY 91-92 and FY 92-93. In some areas our detailed review was limited to a specified recent period. For example, we sampled complaint files for FY 90-91 through FY 92-93.

We reviewed South Carolina statutes and regulations, board policies and records, and reports from other states and organizations. We reviewed our previous sunset audits and audits conducted by the State Auditor's office. We also obtained and reviewed information from the Comptroller General's office. We interviewed board officials, government officials in South Carolina and other states, and representatives of organizations and persons interested in the boards' activities.

We used nonstatistical sampling techniques to review each board's licensing and complaint files. We reviewed internal controls related to the sunset issues. For example, we looked at agency controls for the licensing process, complaint handling, and for ensuring compliance with laws and regulations.

To achieve our audit objectives, we relied on some computer-processed data from the boards that we did not verify. However, when this data was viewed in context with other available evidence, we believe the opinions, conclusions, and recommendations in this report are valid.

The introductory section of the report for each question contains additional information on the scope of our review. In the report we have discussed findings and made recommendations as applicable. Recommendations dealing with administrative matters are addressed to LLR. Recommendations related to regulation of the professions are directed to the individual boards.

Sunset Review Summaries

This section provides a summary and index to our discussion of each board scheduled for sunset review this year. The following pages include, for each board, a reauthorization recommendation and review summary, a description of the background, jurisdiction and authority of the board, and an index to the discussion of major findings and recommendations for that board. We have not included discussion of the activities of each board for each issue when no material problems were identified.

Manufactured Housing Board

The South Carolina Manufactured Housing Board regulates the manufactured housing industry to include manufacturers, manufacturer representatives, dealers and salesmen. We reviewed the laws and operations of the board and found that the regulation of manufacturers and dealers benefits the public and should be continued. The regulation of manufacturer representatives and salesmen is not necessary and should be discontinued. However, the General Assembly may wish to consider requiring the licensure of installers of manufactured housing.

Several of the problems noted in our 1988 audit of the board have been corrected. We updated our review of the adequacy of the surety bonds required of the board's licensees. We identified a problem with the board's administration of the licensing process and noted the inadequacy of the revenue generated by the board.

Background

The South Carolina Manufactured Housing Board was established in 1973. Since 1974 the board's administration has been carried out by a section within the Budget and Control Board's Division of General Services.

The board is designated by the United States Department of Housing and Urban Development as the State Administrative Agency (SAA) to administer and enforce federal manufactured housing standards. The board's responsibility as the SAA includes inspection and investigation of consumer complaints on new homes and monitoring and inspection of homes on dealer lots.

A manufacturer is defined as anyone who designs, constructs, or produces manufactured homes. A dealer is engaged in the business of buying and selling manufactured homes. A manufacturer's representative and a

salesmen are respectively employed by a manufacturer and a dealer. These individuals promote, sell or offer for sale the goods or services of their employer.

The board consists of nine members appointed by the Governor for four-year terms. As provided by statute, the board includes a manufacturer, a dealer, a salesman, a representative of the fire and casualty insurance business, a full-time employee of a fire department, a representative of the banking and finance business, a registered professional engineer, and two public members. The State Fire Marshal is an ex officio member of the board.

As of March 1994, the board reported a total of 1,520 licensees as follows:

Manufacturers	83
Dealers	287
Manufacturer Representatives	145
Salesmen	1,005

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Additional references to the Manufactured Housing Board can be found on pages 66, 103, and 111.

Real Estate Commission

The South Carolina Real Estate Commission licenses real estate brokers, salesmen, and property managers. The commission also administers the Vacation Time Sharing Plans Act, which requires the registration of time sharing projects and the licensure of time sharing salesmen. In addition, the commission administers the Uniform Land Practice Act, which requires out-of-state developers to register before selling land to residents of South Carolina.

We reviewed the laws and operations of the commission and concluded that regulation of the real estate profession benefits the public and should be continued. However, we identified several areas where recommendations from our 1988 audit of the commission have not been implemented.

Scope of Review

As we began our review we became aware of ongoing law enforcement investigations concerning the operations of the commission. Government auditing standards require that auditors not interfere with an ongoing legal investigation. We consulted with officials with the United States Department of Justice and the State Law Enforcement Division to determine the potential effect of our review on their investigations. As a result of our inquiries, we identified areas that we could not review without interfering with their work. These included the commission's handling of complaints, one of the areas we are required by statute to address. In this audit, we did not review complaint handling and some other areas where our review could interfere with the ongoing investigations.

Background

The Real Estate Council, administered by the Insurance Commissioner, was established in 1956 to license and regulate real estate brokers and salesmen. In 1960, a separate Real Estate Board was created. The board's name was changed to the Real Estate Commission in 1972. The commission began regulation of the time sharing industry in 1978 and property managers in 1986.

A real estate broker is anyone who for a fee, commission, or other consideration, sells, rents, or manages real estate property. A broker-in-charge is a broker who is responsible for real estate trust or escrow accounts and for all salesmen, property managers, or time sharing salesmen licensed under him.

A real estate salesman is anyone employed by a broker-in-charge who for consideration sells, rents, or manages property. Property managers are those who manage rental properties. A property manager-in-charge is responsible for real estate and escrow accounts and property managers licensed under him. A time sharing salesman is employed by a broker-in-charge and is authorized to sell time sharing plans.

The commission consists of nine members appointed for four-year terms. Six members with real estate experience are selected by the legislative delegations of the six congressional districts. Two public members are appointed by the Governor and one member of the state-at-large is selected by other commission members.

As of January 1994, the commission reported a total of 24,309 licensees as follows:

Brokers	4,574
Brokers-in-Charge	5,853
Real Estate Salesmen	12,316
Property Managers	862
Property Managers-in-Charge	504
Time Sharing Salesmen	200

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Additional references to the Real Estate Commission can be found on pages 66, 69, 104, and 111.

Residential Builders Commission

The South Carolina Residential Builders Commission regulates residential home builders and specialty contractors. We reviewed the laws and operations of the commission and concluded that regulation of the residential building profession benefits the public and should be continued. However, we found that the regulation of residential specialty contractors lacks the means to protect the consumer and should be discontinued. We also identified problems with the board's examination and other management issues.

Background

The Residential Builders Commission was established in 1974 to regulate home builders. The commission's authority was expanded in 1990 to provide registration and optional certification for specialty contractors. Certification of specialty contractors required testing, while registration did not. A 1993 amendment eliminated certification.

A residential builder is defined as one who constructs or improves residences or other structures not over three floors in height and, for apartments, not exceeding 16 units in size. Builders who undertake projects with costs that exceed \$5,000 must be licensed.

A specialty contractor is defined as one who does construction work or makes improvements which require special skills and involve the use of specialized construction trades or craft. Specialty contractors whose projects exceed \$200 must be registered. Specialty contractors include: plumbers; electricians; heating and air conditioning installers and repairers; vinyl and aluminum siding installers; insulation installers; roofers; floor covering installers; masons; dry wall installers; carpenters; wallpaper hangers; and painters.

The commission consists of seven members appointed by the Governor for four-year terms. The commission is composed of four residential builders, one specialty contractor, and two public members.

As of November 1993, the commission reported the following licensees:

Residential Builders	5,834
Specialty Contractors	8,640

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Additional references to the Residential Builders Commission can be found on pages 66, 69, 83, 105, and 112.

Licensing Board for Contractors

The South Carolina Licensing Board for Contractors regulates general and mechanical contractors, fire protection sprinkler contractors, and burglar and fire alarm system businesses. We reviewed the laws and operations of the board and concluded that regulation of the contracting profession benefits the public and should be continued. In general, the board is administered efficiently. We found some problems with provisions that are restrictive and could impose additional costs to consumers.

Background

The contractors board was established in 1936 to license and regulate general contractors. The board's authority was expanded in 1956 to include regulation of mechanical contractors. The regulation of fire protection sprinkler contractors began in 1985. The State Fire Marshal's office had some enforcement authority for this profession until 1990 when the fire marshal's responsibilities were transferred to the contractors' board. Burglar alarm system businesses have been regulated since 1987; fire alarm businesses were added in a 1992 amendment.

A general contractor is defined as anyone who undertakes or bids on construction projects that cost \$30,000 or more. These projects include buildings, highways, sewers, grading, improvements, or other structures. Mechanical contractors are those who undertake or bid on plumbing, heating, air conditioning, lightning protection, or electric work that costs \$17,500 or more.

Fire protection sprinkler contractors are those who plan, sell, install, repair, maintain, or inspect fire protection sprinkler systems or water spray systems. Burglar and fire alarm system businesses are those that install, service, or respond to electrical, electronic, or mechanical alarms for a fee.

The board consists of eight members appointed by the Governor for five-year terms. Six members must be contractors representing the following groups of licensees: highway; public utilities; building; heating, plumbing or air-conditioning; electrical; and burglar or fire alarm systems. There are also two public members.

As of October 1993, the board reported a total of 7,836 licensees as follows:

General Contractors	4,980
Mechanical Contractors	2,456
Fire Protection Sprinkler Contractors	111
Burglar and Fire Alarm System Businesses	289

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Additional references to the Licensing Board for Contractors can be found on pages 66, 83, 106, and 112.

Board of Registration for Professional Engineers and Land Surveyors

The South Carolina Board of Registration for Professional Engineers and Land Surveyors regulates professional engineers, engineers-in-training, professional land surveyors, land surveyors-in-training, and engineering/land surveying corporations. We reviewed the laws and operations of the board and found that the regulation of the engineering and land surveying professions benefits the public and should be continued.

In general, the board is administered efficiently. However, we identified provisions of the 1993 statute establishing an associate level licensure of professional engineers which could restrict competition within the profession. Also, the requirement for engineering and land surveying corporations to obtain certificates of authorization does not serve a regulatory function and could be discontinued.

Background

The board was established in 1922 to license and regulate professional engineers and land surveyors. Beginning in 1986, the board was authorized to license a second category of land surveyors, TIER B land surveyors. Beginning in 1992, firms practicing engineering or land surveying were required to obtain certificates of authorization. Regulation of associate professional engineers was added in a 1993 amendment.

The practice of engineering as defined by §40-22-10 of the South Carolina Code of Laws includes:

... consultation, investigation, evaluation, planning, design, and observation of construction for the purpose of evaluating compliance with specifications and design in connection with public or private utilities, structures, buildings, machines, equipment, processes, works or projects.

An associate professional engineer is a graduate of an engineering technology rather than an engineering science program. As provided by statute, this licensee may not assume direct responsibility or supervisory control for engineering work as an independent private practitioner or for engineering work provided by an engineering firm.

The practice of land surveying includes:

... measuring and locating lines, angles, elevations, natural and manmade features ... for the purpose of determining areas and volumes, for the monumenting of property boundaries and for the platting and laying out of lands and subdivisions of lands, including the topographic alignment and grades of streets and for the preparation of maps, plats, and property descriptions

A TIER B land surveyor, in addition to responsibilities as a land surveyor, may prepare and furnish subdivision plans for sedimentation and erosion control and storm drainage systems.

A certificate of authorization is required for the practice of engineering or land surveying in a corporation, partnership, or firm. A certificate is not required for an individual practicing in his own name.

The board consists of eight members appointed by the Governor for five-year terms. The board is composed of five registered engineers, two registered land surveyors, and a public member.

As of December 1993, the board reported a total of 23,569 licensees as follows:

Professional Engineers	9,810
Professional Land Surveyors	1,020
Engineers-in-Training	11,706
Land Surveyors-in-Training	377
TIER B Land Surveyors	34
Certifications of Authorization	873

According to a board official, testing for the licensure of associate professional engineers will begin in 1994.

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Additional references to the Board of Registration for Professional Engineers and Land Surveyors can be found on pages 66, 83, 107, and 113.

Environmental Certification Board

The South Carolina Environmental Certification Board regulates water operators, wastewater operators, well drillers, and percolation test technicians. We reviewed the laws and operations of the board and found that the regulation of water and wastewater operators and well drillers benefits the public and should be continued. However, there is no longer a need to regulate percolation test technicians.

We found that the board has been operating a certification program for swimming pool operators without statutory authority. Also, the board needs to improve its handling of complaints. The board's requirement that an operator be employed prior to certification could be restrictive and should be discontinued.

Background

The Board of Certification of Public Water Treatment Plant Operators was established in 1966 to certify and regulate water operators. The board's authority was expanded in 1969 to include regulation of wastewater operators and in 1972 to include percolation test technicians. The board began regulation of well drillers in 1982. In 1988, the board's name was changed to the Environmental Certification Board.

A water or wastewater operator is an individual employed in a public water or wastewater treatment plant who determines the chemical quality of water, alters the characteristics of water, or regulates changes in water quality. A well driller is an individual directly responsible for constructing wells at well sites. A percolation test technician determines if sites are suitable for the installation of septic tanks by testing water absorption characteristics of the soil.

The board consists of nine members appointed by the Governor for four-year terms. The board must include two water operators, two wastewater operators, one well driller, one public member, and one representative each from the Water Resources Division of the Department of Natural Resources, the Department of Health and Environmental Control, and an institution of higher education actively involved in operator training.

As of March 1994, the board reported the following licensees:

Water Operators	2,511
Wastewater Operators	6,097
Well Drillers	750
Percolation Test Technicians	35

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Additional references to the Environmental Certification Board can be found on pages 66, 108, and 114.

Real Estate Appraisers Board

The Real Estate Appraisers Board was established in 1991 to license real estate appraisers. The board has been administered as a part of the Real Estate Commission. We reviewed the laws and operations of the board and concluded that regulation of real estate appraisers benefits the public and should be continued. However, one category of licensure, "registered appraiser," may not be necessary. Also, the board has not investigated and resolved complaints in a timely manner.

Background

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 regulates state certification and licensing programs for real estate appraisers who perform appraisals in certain federally related transactions. Following the enactment of the federal law, the South Carolina Real Estate Appraisers Board was established in 1991. Before 1991, appraisers were regulated by the South Carolina Real Estate Commission.

The Real Estate Appraisers Board receives administrative services from the Real Estate Commission. The real estate commissioner serves as the administrator for the board. A real estate appraisal is defined as:

. . . an analysis, opinion, or conclusion as to the value of identified real estate or specified interests in real estate, including a feasibility study, marketability study, or other study or analysis . . . for a fee or other consideration

The board has six categories of licensees. A certified general appraiser can perform all appraisals. Certified residential appraisers perform nonresidential appraisals valued at less than \$250,000 and residential appraisals of one-to-four units regardless of value. A licensed appraiser generally appraises nonresidential properties valued below \$250,000 and one-to-four unit residential properties less than \$1 million.

The board issued transitional licenses from January 1992 to December 1993. A transitional licensed appraiser was required to have either the education or the experience required of a licensed appraiser but not both. As provided by statute, these licensees have 24 months to complete the necessary requirements to become licensed appraisers.

Appraiser apprentices are those who assist in performing appraisal assignments under the supervision of a certified general, certified residential, or licensed appraiser. Registered appraisers must maintain an active South Carolina real estate license. Registered appraisers can appraise property valued at \$100,000 or less.

The board consists of seven members appointed by the Governor for three-year terms. The board must be composed of four real estate appraisers, one mortgage lender, one real estate broker, and a public member.

As of March 1994, the board reported a total of 2,095 licensees as follows:

Certified General Appraisers	478
Certified Residential Appraisers	454
Licensed Appraisers	296
Registered Appraisers	200
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Additional references to the Real Estate Appraisers Board can be found on pages 66, 69, 104, and 114.

Board of Long Term Health Care Administrators

The South Carolina Board of Long Term Health Care Administrators regulates nursing home administrators and community residential care facility administrators. We reviewed the laws and operations of the board and found that the regulation of nursing home administrators and community residential care facility administrators benefits the public and should be continued.

The board needs to take action to ensure that complaint investigations are carried out when information on complaints is received from DHEC and the ombudsman's program. We also identified some problems with the administration of the licensing process.

Background

Federal law and regulations require that states have licensure programs for nursing home administrators in order to receive federal medicaid funding. In 1970, the Board of Examiners for Nursing Home Administrators was established to license nursing home administrators.

The functions and membership of the board substantially changed in 1990. The board's authority was expanded to include regulation of community residential care facility administrators. In 1993, the board's name was changed to the Board of Long Term Health Care Administrators.

A nursing home is a facility with an organized nursing staff which provides intermediate or skilled nursing care to accommodate two or more unrelated persons for more than 24 hours. Community residential care facilities are homes that offer room and board and a degree of personal assistance for 2 or more persons aged 18 or older.

The Board of Long Term Health Care Administrators is composed of nine members appointed by the Governor for three-year terms. The board must include three nursing home administrators; three community residential care facility administrators; one consumer, sponsor, or family member of a consumer of nursing home services; one consumer, sponsor or family member of a consumer of community residential care services; and one voting member of the Long Term Care Council.

As of March 1994, the board reported a total of 924 licensees as follows:

Nursing Home Administrators	360
Community Residential Care Facility Administrators	564

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Additional references to the Board of Long Term Health Care Administrators can be found on pages 66, 109, and 115.

Board of Registration for Geologists

The South Carolina State Board of Registration for Geologists regulates professional geologists and geologists-in-training. We reviewed the laws and operations of the board and determined that the regulation of geologists benefits the public and should be continued. We followed up on problems noted in our 1991 audit of the board and found that some improvements have been made. However, the board still does not have appropriate management controls over its administrative services contract.

Background

The geology board was established in 1986. The law that created the board is a practice act for the public practice of geology. The law restricts the public practice of geology and the use of the title "registered professional geologist" to those who have obtained certification.

The "public practice of geology" is defined as:

. . . the performance of geological service or work in the nature of consultation, investigation, surveys, evaluations, planning, mapping, and inspection of geological work required for or supporting compliance with municipal, county, State of South Carolina or federal regulations.

Geologists perform such activities as studying sites for waste disposal and nuclear power facilities; preparing plans for hazardous waste and groundwater contamination clean-up; monitoring ground water around landfills and nuclear power plants; and studying sites for placement of high rise structures.

The board consists of five members appointed by the Governor for five-year terms. The board must be composed of one academic geologist, one salaried company geologist, one independent or consultant geologist, one geologist from a state agency, and one public member.

As of December 1993, the board reported the following licensees:

Professional Geologists	627
Geologists-in-Training	37

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Additional references to the Board of Registration for Geologists can be found on pages 66, 83, 110, and 115.

Effects of Regulation

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

We reviewed the job titles and practices regulated by each board to determine whether the restrictions significantly affect the prices of goods or services. We investigated restrictions on competition related to advertising, reciprocity and apprenticeships. We reviewed each board's requirements for obtaining a license, especially the development and administration of examinations, to determine whether they measure competence.

Restrictive Licensing Requirements and Practices

Regulation may increase the prices consumers pay for various goods and services by creating barriers to entry into an industry or profession, thus reducing competition. None of the boards we reviewed directly control the prices or fees charged by their licensees. However, the costs of regulation, such as license and examination fees, may be passed on indirectly to the consumer. (See board fee schedules in Appendix B.) It is unlikely that these costs add significantly to the prices of goods or services. We did, however, identify some regulatory practices which may unnecessarily increase costs to consumers.

Associate Licensure for Engineers — Board of Professional Engineers and Land Surveyors

Prior to 1993, a degree in engineering was required for licensure as a professional engineer. Section 40-22-195 of the South Carolina Code of Laws provides that an applicant with a degree in engineering technology may be licensed as an associate professional engineer. However, the 1993 provisions for licensure of associate professional engineers unnecessarily restrict their practice of the engineering profession. The associate professional engineer's license was implemented by the board in June 1993.

An applicant must earn eight years of experience, whereas four years are required for the professional engineer's license. However, once a person passes the examination and is licensed at the associate level, he may not assume direct responsibility or supervise engineering work as an independent private practitioner or for an engineering firm. The scope of practice of an associate professional engineer is not restricted in the public sector.

Education requirements for professional engineers vary in the other southeastern states. Four states (Alabama, Georgia, North Carolina, and Virginia) accept a degree in engineering technology as meeting educational requirements for registration. Three states (Alabama, North Carolina, and Virginia) require additional years of experience before the applicant may take the written examination to become a professional engineer. However, after passage of this examination, the scope of practice for registrants is not limited.

According to board Regulation 49-202, an associate professional engineer cannot obtain licensure as a professional engineer except by acquiring additional education equivalent to an engineering degree. The board is considering proposals that would allow an associate professional engineer to obtain full licensure by passing an examination.

The associate level of licensure for professional engineers, which limits the licensee to practicing in a non-supervisory role, could restrict competition within the profession.

Recommendation

- 1 The General Assembly may wish to consider amending §40-22-195 of the South Carolina Code of Laws to allow an applicant with training in engineering technology and a total of eight years of engineering experience to have full practice privileges as a professional engineer.

Employment Requirement — Environmental Certification Board

A water or wastewater operator must be currently employed in a treatment plant to be certified by the Environmental Certification Board. This requirement may deny qualified applicants entry into the profession.

Section 40-23-10(4) of the South Carolina Code of Laws defines an operator as a person "... employed in a public water or wastewater treatment plant" The board's application form requires applicants to submit information about their employment status.

According to the board's director, the employment requirement is intended to ensure that the operator has accumulated the necessary experience for successful job performance. However, we noted instances where applicants with 12 and 20 years of experience as operators were denied certification because they were not employed in a treatment plant. After securing employment, these applicants were certified.

The employment requirement for certification is overly restrictive and may cause problems for applicants in obtaining employment.

Recommendation

- 2 The General Assembly may wish to consider amending §40-23-10(4) to delete the requirement that water and wastewater operators must be employed.

Examination as a Condition for Renewal — Board of Professional Engineers and Land Surveyors

The statutes that govern the Board of Registration for Professional Engineers and Land Surveyors contain restrictive provisions for late renewals.

Section 40-22-350 of the South Carolina Code of Laws, as amended in 1991, provides that an engineer or land surveyor who has not renewed his license within three months of the renewal date "may be required to pass an oral or written examination as a condition of relicensing." The board also charges a late fee for overdue renewals.

Prior to July 1991, the board allowed late renewals with penalty payment for up to one year before exercising the optional examination requirement. According to the board's executive director, the board shortened the grace

period to increase the incentive for timely renewals and to avoid the problem of engineers practicing with lapsed licenses.

Other licensing boards, such as the Board of Architectural Examiners and the Board of Registration for Geologists, assess late payment fees for overdue renewals rather than requiring an examination. As of November 1993, the engineers and land surveyors board had not enforced this provision by requiring a licensee to take the examination for license renewal.

Recommendation

- 3 The General Assembly may wish to consider amending §40-22-350 of the South Carolina Code of Laws to lengthen the maximum grace period for late license renewals before the board is authorized to exercise an optional examination requirement.
-

Licensure of Burglar Alarm Contractors — Licensing Board for Contractors

Statutory provisions that require burglar alarm contractors to pass a fire alarm examination could prevent qualified applicants from being licensed.

All burglar alarm contractors are required to be licensed by the board under the Regulation of Burglar and Fire Alarm System Businesses Act of 1986. This act was amended, effective January 1993, to require one license that permits the holder to participate in both the burglar and fire alarm system business. Section 40-79-140(A), as amended, requires burglar alarm contractors applying for licensure after January 1, 1993, to pass a national competency examination for fire alarm contractors in addition to the technical examination for burglar alarm contractors already required by the board.

Although the national examination covers general knowledge, such as electrical circuitry, that would be relevant for both fire and burglar alarm contractors, it also requires a specific understanding of issues directly related to fire alarm systems, such as principles of smoke movement in buildings and interconnection with sprinkler waterflow devices.

Criteria for licensure are designed to ensure that licensees possess the knowledge and skills in sufficient degree to perform important occupational activities safely and effectively. Technical competency

examinations should be directly related to tasks that are actually performed on the job. A bill that would exempt burglar alarm contractors from the national competency examination for fire alarm contractors is currently being considered by the General Assembly.

Recommendation

- 4 The General Assembly may wish to consider amending §40-79-140(A) to exempt burglar alarm contractors from passing a national competency test for fire alarm contractors as a requirement for licensure.
-

Restrictive Licensing Laws — Licensing Board for Contractors

The 1988 sunset audit of the Licensing Board for Contractors noted that state laws requiring contractors to be licensed before bidding on a project are in conflict with some federal regulations and may restrict competition. As a result, projects in the state may lose federal funding.

Section 40-11-100 of the South Carolina Code of Laws requires individuals to obtain a license from the Licensing Board for Contractors before engaging or offering to engage in general or mechanical contracting. Also, §40-11-180, in effect, requires a person bidding on a contract to show evidence of being licensed before his bid is opened or considered. Furthermore, §40-11-300 makes it a misdemeanor to receive or consider a bid from an unlicensed individual except for bids for South Carolina Department of Transportation projects.

The Environmental Protection Agency (EPA), which helps fund state projects through its revolving loan program, requires that EPA-funded contracts be awarded to the lowest bidder in a manner that does not unduly restrict or eliminate competition. State laws requiring licensure prior to bidding are considered restrictive by EPA because they prevent unlicensed contractors who are otherwise qualified from bidding on projects. EPA officials state that a successful bidder should be allowed to meet state licensing requirements between the time the bid is submitted and work begins on a project.

The Department of Health and Environmental Control oversees the operation of EPA contracts in South Carolina. According to a department official, the continuing conflict between state licensing requirements for

general contractors and federal procurement regulations affects approximately seven to ten projects per year, involving up to \$30 million in annual EPA grants for wastewater control projects.

Recommendation

- 5 The General Assembly may wish to consider amending §40-11-100, §40-11-180 and §40-11-300 of the South Carolina Code of Laws to allow contractors bidding on federally funded projects to bid without a license and to require licensure before the contract award.

Annual Bidder's License — Licensing Board for Contractors

The annual bidder's license required for general and mechanical contractors does not serve a regulatory function; it is an additional fee charged to contractors.

Section 40-11-200 of the South Carolina Code of Laws requires general and mechanical contractors to pay an annual bidder's license fee of \$120 in addition to the fee charged for their license to practice in this state. As we reported in 1988, the bidder's license has no relationship to contractors' qualifications or competence to work in the profession.

From FY 89-90 through FY 92-93, bidder's license fees comprised approximately 40% of the board's total annual revenue. In FY 92-93, the board collected \$575,760 in bidder's license fees.

According to the director of the Licensing Board for Contractors, the purpose of the bidder's license is to raise revenue. The board's annual revenues have exceeded the 110% requirement by a wide margin (see p. 47).

Licensure requirements should be fair and operate to protect practitioners and consumers alike. Requirements such as the bidder's license, that do not clearly relate to safe and effective practice, should be eliminated.

Recommendation

- 6 The General Assembly may wish to consider amending §40-11-200 of the South Carolina Code of Laws to delete the bidder's license as a licensure requirement for contractors.

Advertising by Real Estate Schools — Real Estate Commission

In our 1988 audit, we noted that the Real Estate Commission's restriction of advertising by real estate proprietary schools may impose additional cost to consumers. A provision of Regulation 105-200 prohibits such schools from placing advertisements under the real estate sales or help wanted columns in newspapers or directories. As of February 1994, this regulation had not been repealed.

The staff of the Federal Trade Commission (FTC) has commented that

. . . [l]imiting where advertisements can appear may increase the cost of advertising to potential real estate professionals.

Increased advertising costs may then be passed on to the consumer. The FTC recommended a reevaluation of this restriction given its potential for increased consumer costs.

The commission has proposed regulations which would eliminate the restriction on advertising.

Recommendation

-
- 7 The Real Estate Commission should repeal Regulation 105-200(b) on advertising by real estate proprietary schools.
-

Licensure Through Endorsement — Board of Registration for Geologists

The State Board of Registration for Geologists has not followed the provisions of §40-77-210 of the South Carolina Code of Laws which provide for licensure through endorsement. Instead, the board has granted licensure through reciprocity, which is not provided for by statute.

Endorsement involves a case-by-case review of each applicant's credentials to determine if they are equivalent to South Carolina's and provides for the movement of licensed practitioners between the states. Reciprocity involves a formal agreement between two states to accept for licensure all applicants that are licensed in the other state.

Section 40-77-210 provides that a person licensed in a state or territory of the United States or any foreign country with comparable licensing

requirements may be licensed in South Carolina without further examination.

According to a board spokesperson, the board has established reciprocity agreements with the states of Georgia, North Carolina, and Virginia. Only the registrants from these states are granted licensure without examination. Under the board's statute, however, the board should consider applicants from any states with comparable licensure requirements.

Recommendation

- 8 The Board of Registration for Geologists should review and amend their licensing procedures to grant licensure to out-of-state licensees in accordance with §40-77-210 of the South Carolina Code of Laws.
-

Requirements for Photographs — Board of Long Term Health Care Administrators

The board requires applicants to submit two photographs with their license application form. According to board staff, the photographs are not needed for licensing purposes. The board does not use the photographs to identify applicants taking the examination. Requiring two photographs is not related to an assessment of professional competency, and is an unnecessary expense to applicants.

Recommendation

- 9 The Board of Long Term Health Care Administrators should discontinue the practice of requiring applicants to submit photographs.

Examinations Required for Licensure

All of the boards we reviewed require applicants to pass an examination for licensure. Six of the nine boards administer a national examination, developed by either a professional testing service or their national membership association. Seven boards administer a state examination on regulations or other material specifically related to South Carolina. (Four boards administer both a national and state examination.)

We reviewed how examinations were developed to determine if they relate to competence in job performance. We observed or reviewed administration procedures to determine whether they provide an orderly and secure testing environment. We found no material problems with administration of examinations.

Licensure examinations should measure the skills required for competent performance in a profession and meet professional testing standards. To meet such standards, examinations should be based on accurate and up-to-date job analyses and designed according to documented test plans or specifications. Item analyses should be performed to review results and document test validity and reliability. We identified several issues related to the development of examinations.

Commission Examinations — Residential Builders Commission

The Residential Builders Commission administers a two-part examination to applicants for licensure. The first part requires calculation of measurements and the amount of materials needed for a complete set of building plans. The second part consists of short-answer questions related to the standard building code for one- and two-family dwellings. A passing score on both parts is necessary for licensure.

We found a problem with the development of the builders' examination which may affect how accurately qualifications are being tested. The examination is developed by commission staff and licensed builders and not according to professional testing standards. According to the director, the Residential Builders Commission has reviewed professional examinations but has rejected them because they are expensive and are based on a different regional building code. However, the testing service which provides examinations for contractors, and also residential builders, will modify its standard examination for an additional fee.

Recommendation

- 10 The Residential Builders Commission should review its examinations to ensure that they meet professional testing standards and are consistent and fair to applicants.
-

Commission Examinations — Real Estate Commission

The Real Estate Commission administers examinations for real estate brokers, salesmen and property managers and time sharing salesmen.

Real estate examinations do not meet professional testing standards. The commission contracts with the University of South Carolina for the development and administration of the examinations for brokers, salesmen and property managers. In 1988, we recommended that the commission study the feasibility of using a professional testing service for these examinations. According to a commission official, after consulting with national testing services in 1988 and 1989, the commission concluded that it could develop better professional examinations.

The commission has worked with a university consultant and real estate schools throughout the state to upgrade the examinations to meet professional standards. However, as of February 1994, revisions had not been completed. Commission and university staff estimated that the examination should be upgraded as early as May 1994.

In 1988, we also recommended that the commission revise the examination for time sharing salesmen to meet professional testing standards. This examination was developed in 1979 by commission officials and representatives of the time sharing industry and has not been revised since that time. According to commission officials, the time sharing examination has not been updated because of anticipated revisions in the statutes governing time sharing plans.

Recommendations

- 11 The Real Estate Commission should expedite procedures to revise and implement examinations for brokers, salesmen and property managers to ensure that examinations meet professional standards.
- 12 The Real Estate Commission should revise the examination for time sharing salesmen to ensure that it meets professional testing standards.

Board Examinations — Licensing Board for Contractors

The Licensing Board for Contractors administers an examination to general and mechanical contractors on the South Carolina Code of Laws and 21 technical competency examinations in different contracting classifications.

The board has increased the number of technical examinations it purchases from a professional testing service since our 1988 audit. However, problems exist with the remaining examinations which could affect how accurately contractors' qualifications are being tested.

Of the 21 technical examinations administered by the board, 7 were not developed according to professional testing standards. These seven examinations have been developed by board members or contractors, or are modified versions of examinations used in other states. At least one of them has not been revised in ten years.

The professional testing service which provides the other 14 technical examinations used by the board offers examinations in all contracting fields or will design one to meet specific qualifications. According to the director of the Licensing Board for Contractors, the board cannot afford to purchase these examinations from the testing service.

Recommendation

-
- 13 The Licensing Board for Contractors should review its examinations to ensure that they meet professional testing standards.
-

Oral Examinations — Board of Registration for Geologists

The Board of Registration for Geologists has not updated a regulation regarding the administering of oral examinations to conform with a statutory change. In 1991, the board required an applicant to pass an oral or a written examination.

We recommended that the General Assembly consider amending §40-77-150 of the South Carolina Code of Laws to delete the provision for allowing the board to administer an oral examination as a condition of registration. The law was amended to delete this provision and to require applicants to pass "an appropriate written examination," effective June 1,

1992. However, Regulation 131-3.02 has not been amended to reflect this change in the statute.

Recommendation

14 The Board of Registration for Geologists should amend Regulation 131-3.02 to delete the provision which allows the board to administer an oral examination.

Impact of Deregulation

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Previous sunset audits have been conducted for eight of the nine boards reviewed. The Real Estate Appraisers Board, created in 1991, was reviewed for the first time.

We reviewed our previous recommendations for each board. If we had recommended continued regulation, we determined if there were new issues which might affect our previous recommendation. If we had questioned the need for continued regulation of a board, we determined whether the benefits of restricting practice in that profession outweigh the costs.

Deregulation

We recommended continuation of all the boards we reviewed. However, we found that the regulation of some licensing categories may be unnecessary. These issues are discussed below.

Registration of Specialty Contractors — Residential Builders Commission

The Residential Builders Commission statutes were amended in 1990 to require the registration of specialty contractors who work on projects in excess of \$200. There are 12 categories of specialty contractors for whom registration is required: plumbers; electricians; heating and air conditioning installers and repairers; roofers; carpenters; painters; masons; vinyl and aluminum siding installers; insulation installers; dry wall installers; floor covering installers; and wallpaper hangers.

The registration process involves completing an application, paying an annual fee of \$20 and submitting a resume of work experience. There is no examination or specified minimum standard of qualification required.

The registration process for specialty contractors lacks the means to protect the consumer and should be discontinued. Regulation of occupations should meet a public need. Regulatory provisions usually establish minimum qualifications to ensure that practitioners will be competent. However, specialty contractors do not have to meet minimum qualifications to become registered. Certain specialty trades are already regulated by the South Carolina Licensing Board for Contractors and the South Carolina Municipal Association (see p. 71).

The regulation of specialty contractors varies in the other southeastern states (Alabama, Florida, Georgia, Mississippi, North Carolina, Tennessee and Virginia). However, an exam is administered to applicants in all of these states. Also, the monetary limits for licensure in these states generally exceed the limit in South Carolina. For example, in Virginia, licensure is required when the value of the contract for the project exceeds \$1,500.

The South Carolina Department of Consumer Affairs provides statewide services for the mediation of complaints. According to an agency official, the department has resolved complaints against specialty contractors. In FY 91-92, the department handled a total of 338 complaints against contractors/builders.

Recommendation

-
- 15 The General Assembly may wish to amend §40-59-75 of the South Carolina Code of Laws to delete the requirement for registration of specialty contractors.

Registration of Appraisers — Real Estate Appraisers Board

State law regulates six types of appraisers including one designated as “state registered real estate appraiser.” The category of “registered appraiser” may not be necessary. The federal government, which regulates appraisals used in most real estate transactions, does not require or recommend regulation of the registered appraiser classification.

Section 40-60-30(B)(1) provides for the regulation of registered real estate appraisers. Registered appraisers cannot conduct appraisals for any federally related transaction. They are authorized to perform appraisals below \$100,000. The only requirement for the registered appraiser classification is that the applicant must maintain an active real estate license. The registration process involves completing an application and paying an annual fee of \$100.

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council monitors state requirements for appraisers. The ASC requires two appraisal classifications (“state certified appraiser” and “state licensed appraiser”). In addition, the subcommittee recommends two other classifications of appraisers (“certified residential appraiser” and an entry-level classification). The board licenses appraisers in all the required and recommended classifications. According to policy statements regarding the state regulation of appraisers:

The ASC strongly urges States to use the federally recognized designations or titles The use of other designations or titles increases the likelihood of confusion among users and could result in the employment of appraisers who do not have the required designation to perform the appraisal for which they are engaged

The licensing category of registered appraiser is not necessary and could cause confusion for consumers.

Recommendation

16 The General Assembly may wish to consider amending §40-60-30(B)(1) and other applicable sections of the South Carolina Code of Laws to delete the licensing category of "registered appraiser."

Licensure of Salesmen and Manufacturer Representatives — Manufactured Housing Board

Section 40-29-100 of the South Carolina Code of Laws requires that salesmen and manufacturer representatives be licensed by the board. However, licensure of salesmen and manufacturer representatives is not necessary, since dealers and manufacturers (both licensees of the board) are responsible for these employees. Salesmen are employed by dealers while manufacturer representatives are employed by manufacturers.

Regulation 19-425.19 addresses the responsibility of dealers to supervise employees. Further, Regulation 19-425.20 provides that a dealer must review all sales transactions handled by a salesperson. According to a board official, manufacturers as employers are responsible for manufacturer representatives.

As of March 1994, salesmen and manufacturer representatives accounted for the largest number (76%) of total licensees, which means that the greatest percentage of administrative costs associated with licensing may be for these two categories.

None of the southeastern states (Alabama, Florida, Georgia, Mississippi, North Carolina, Tennessee and Virginia) license manufacturer representatives. Five southeastern states (Alabama, Florida, Georgia, Mississippi and Tennessee) do not license salesmen.

The administrative costs associated with licensure of salesmen and manufacturer representatives are unnecessary.

Recommendation

- 17 The General Assembly may wish to consider amending §40-29-100 of the South Carolina Code of Laws to delete the requirement for licensure of salesmen and manufacturer representatives.
-

Certification of Percolation Test Technicians — Environmental Certification Board

The Environmental Certification Board should discontinue the licensing of percolation test technicians. Percolation tests are no longer required by the Department of Health and Environmental Control (DHEC).

Section 40-23-140 of the South Carolina Code of Laws provides that percolation test technicians must be certified in order to practice in the state. Prior to 1983, percolation tests were used to determine if sites were suitable for the installation of septic tanks by testing water absorption characteristics of the soil. In 1983, DHEC adopted a different type of soil analysis considered to be more valid and reliable in siting wastewater disposal systems. The role of the percolation test technician in the protection of water quality was thus eliminated.

The number of percolation test technicians declined from 80 in 1987 to 38 in 1993. There have been no applicants for certification since 1988. According to officials of the board and DHEC, regulation of percolation test technicians is no longer needed.

Recommendation

- 18 The General Assembly may wish to consider amending §40-23-140 of the South Carolina Code of Laws to discontinue the licensure of percolation test technicians.

Corporate Registration— Board of Registration for Professional Engineers and Land Surveyors

The requirement for engineering and land surveying corporations to obtain certificates of authorization does not serve a regulatory function; it is an additional fee charged to corporations.

Section 40-22-40 of the South Carolina Code of Laws, effective July 1, 1991, requires one or more of the principal officers of corporations offering engineering/land surveying services in the state to be registered with the Board of Registration for Professional Engineers and Land Surveyors. Further, the legislation requires, starting July 1, 1992, that corporations obtain a certificate of authorization from the board by paying an initial registration fee of \$70 and an annual renewal fee of \$45. As of December 1993, the board had registered 873 corporations, collecting a total of \$61,110 in fees.

The State of Tennessee requires engineering and land surveying corporations to submit a disclosure statement listing their principal officers. The corporation pays no initial registration fees. According to a board official, corporate registration is used to track the locations of corporations. However, because §40-22-40 requires at least one of the corporate officers to be licensed with the board, there is no need for the corporation to obtain a certificate of authorization or to pay registration and renewal fees.

Recommendations

-
- 19 The General Assembly may wish to consider amending §40-22-40 of the South Carolina Code of Laws to delete the requirement for corporate certificates of authorization and corporate registration fees.
 - 20 If the General Assembly chooses to delete these requirements, it may wish to require disclosure statements which list the principal officers of the corporations.

Need for Regulation

Licensure of Installers — Manufactured Housing Board

Our 1988 and current review identified problems with the installation of manufactured homes. Licensure of installers could help to ensure that manufactured homes are properly installed.

State law provides minimum requirements for the installation of manufactured homes, but it does not require that installers be licensed. Licensure of installers, who set up manufactured homes, would provide additional protection to consumers.

Set-up procedures for a manufactured home are performed at the occupancy site and are intended to prepare the home for safe and comfortable habitation. Procedures include blocking, leveling, and tying down the home, as well as connecting its utility systems. Also, set-up involves assembly of multiple or expandable units, such as double-wide homes.

A manufactured home that is improperly installed can cause structural damage to the home and pose safety hazards for the occupants. According to a Manufactured Housing Institute publication, it is essential that an experienced crew install manufactured homes to ensure proper leveling and anchoring.

In our 1988 audit, we found that approximately one-third of the complaints reviewed involved set-up procedures. We recommended that the manufactured housing section propose appropriate set-up legislation. In 1990, the board promulgated regulations which established minimum installation requirements for manufactured homes.

In October 1991, the manufactured housing section drafted additional legislation that would require the licensure of manufactured home installers. As of March 1994, however, the legislation had not been introduced in the General Assembly.

A survey of manufactured housing officials in seven southeastern states indicated that five states (Alabama, Georgia, Mississippi, North Carolina and Tennessee) license installers.

Recommendation

- 21 The General Assembly may wish to consider amending Title 40, Chapter 29, of the South Carolina Code of Laws to require licensing of installers of manufactured housing.

Administrative Costs

Determine the overall costs, including manpower, of the agency under review.

We reviewed the revenues, expenditures and appropriations for each board for FY 88-89 to FY 92-93. This information is presented in Appendix A (see p. 103).

We determined whether each board generated sufficient revenue to meet appropriation act requirements. Also, we examined the staffing for all of the boards and followed up on recommendations made in our previous audits.

In this section, we discuss the sufficiency of board revenues and the use of state resources.

Revenue Requirements

The General Assembly has required professional and occupational licensing agencies (POLAs) to cover their direct and indirect costs. POLAs were required by the appropriation acts to generate 115% of their appropriations in FY 88-89 and FY 89-90, and 110% of appropriations from FY 90-91 to FY 92-93. We found that two of the boards generated revenue in excess of the required amount.

Excess Revenue — Licensing Board for Contractors

In our 1988 report, we noted that the Licensing Board for Contractors collected revenues that far exceeded expenses necessary to regulate the contracting profession. The board has continued to generate excess revenues. Over the past five years, the contractors board's revenues have averaged 346% of appropriations (see p. 106).

The contractors board has generated approximately \$5 million in excess revenue over the amount required from FY 88-89 through FY 92-93. The board's fees have been set by statute and not determined by the board.

Although the board collects excess fees, it has not always received requested increases in appropriations. The executive director stated that the board did not have funds to obtain professionally developed examinations for some specialties (see p. 37). The board requested an increase in appropriations for testing expenses in at least two fiscal years without obtaining these funds.

Recommendation

- 22 The General Assembly may wish to consider whether current fees imposed on contractors are in accord with legislative intent regarding professional and occupational licensing agencies.

Excess Revenue — Real Estate Appraisers Board

The Real Estate Appraisers Board has generated far more in revenue than the cost to regulate the appraisal profession. In FY 91-92, the board generated approximately \$397,000 in revenue, 146% of its appropriation; in FY 92-93, the board collected approximately \$493,000, 305% of its appropriation.

The Real Estate Appraisers Board is, in essence, a program of the Real Estate Commission in that it is not separately funded in the appropriation act. Therefore, the board has not been required to meet the appropriation act provisos. Nevertheless, board revenues should correlate with the cost of regulation.

The board's fees are temporarily set by statute until regulations are established. A review of the proposed regulations showed that the board has recommended increasing fees in at least seven cases and decreasing fees in at least two cases. For example, the board has proposed that the fee for one late renewal period be increased from \$25 to \$75.

Recommendation

- 23 The Real Estate Appraisers Board should promulgate regulations to set fees that are based on the cost of regulation.
-

Insufficient Revenue — Manufactured Housing Board

The Manufactured Housing Board has generated less revenue than needed to regulate the manufactured housing industry. Over the past five years, the board's revenues have averaged only 83% of appropriations (see p. 103).

Prior to February 1994, the Manufactured Housing Board was one of five regulatory entities within general services' department of building codes and regulatory services and not a separate licensing board. As such, the board was not required to meet the appropriation act proviso.

In our 1988 audit, we found that the board's regulatory costs were not adequately supported by revenues. We recommended that the board consider raising licensing fees as a means to increase revenue. The board increased fees in 1990. However, some licensing fees in South Carolina are still far less than those in other southeastern states. For example, the dealer license fee in South Carolina is \$50 compared with \$100 in Alabama and Georgia and \$250 in North Carolina.

In February 1994, the board voted to increase license fees. As of March 1994, no further action had been taken to amend board regulations.

Recommendation

- 24 The Manufactured Housing Board should amend its regulations to establish fees which are sufficient to cover the direct and indirect costs of regulation.

Travel Expenses

We found that travel expenditures for the Board of Registration for Geologists have been excessive.

Board of Registration for Geologists

The Board of Registration for Geologists continues to hold meetings at in-state resort locations such as Hilton Head and Myrtle Beach. In our 1991 review, we recommended that the board reevaluate its use of travel for board meetings and attempt to manage state funds in a cost-effective manner. We found that the board was meeting out-of-state and at in-state resort locations.

From FY 90-91 to FY 92-93, the board spent over \$14,000 for in-state travel; approximately \$4,000 was spent for out-of-state travel.

The board has reduced the number of meetings held out-of-state. In our 1991 review, we found that the board held 6 of 36 (17%) of its meetings in out-of-state locations. From FY 90-91 to FY 92-93, the board held one meeting out-of-state.

The board, however, continues to hold meetings at in-state resort locations. From FY 90-91 to FY 92-93, the board held 6 of 22 (27%) board meetings at in-state resort locations at a cost of approximately \$10,400. The board members were reimbursed a total of \$6,721 for these meetings. In addition, the board reimbursed the contracted administrator and her employee \$3,696 for the meetings. The average cost of a meeting at an in-state resort location was approximately \$1,700. We estimate the average travel cost of a board meeting held in Columbia to be approximately \$230, or \$1,470 less than a meeting held at an in-state resort location.

We compared the costs of a two-day board meeting held in Hilton Head with one held in Columbia at the board's offices (see Table 3.1). The board meeting held in Columbia cost approximately \$1,350 less than the one held in Hilton Head.

**Table 3.1: Comparative
Expenditures for Board Meetings
at Columbia and Hilton Head**

Columbia Meeting -- March 22-23, 1991					
Lodging	Meals	Mileage	Misc.	Per Diem	TOTAL
\$148	\$76	\$180	\$0	\$70	\$474
Hilton Head Meeting -- February 21-22, 1992					
Lodging	Meals	Mileage	Misc.	Per Diem	TOTAL
\$1,008	\$242	\$494	\$10	\$70	\$1,824
Difference					\$1,350

Figures are rounded to the nearest dollar.

Source: Board of Registration for Geologists

The board's funds may be conserved by holding fewer meetings at resort locations. In addition, public access to the board may be limited when meetings are held in relatively remote locations.

Recommendation

- 25 The Board of Registration for Geologists should consider travel expenses when determining locations for board meetings.

Issue (3)
Administrative Costs

Efficiency of Administration

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

To evaluate efficiency of administration, we reviewed each board's written policies and procedures. We also selected a judgmental sample from each type of license issued, and reviewed individual files to determine whether the board was carrying out the licensing process in accordance with statutory and policy requirements.

We obtained and reviewed information in other administrative areas such as the board's use of state vehicles and management of contracts for services. We also followed up on administrative findings in previous audits of the boards, as applicable. Our findings in these areas are discussed below.

Administrative Functions

We followed up on problems identified in our 1991 audit of the Board of Registration for Geologists and found the board still needs improvement in its contract management and timeliness of deposits.

Payment for Excess Hours — Board of Registration for Geologists

During FY 89-90 the board had routinely approved payment for excess hours to the contracted administrator without adequate documentation for the services performed. We found that the board continued to pay for excess hours without documentation. For example, during FY 90-91, the administrator was paid \$4,375 for excess hours. These payments were made without time sheets or other appropriate documentation that the contractor worked hours in excess of those required by contract.

In July 1992, the contracted administrator began using time sheets to document the tasks and hours performed. However, we were unable to find evidence that the board reviewed or approved these time sheets before making payments for excess hours.

We also found problems with the rate the board paid the contractor for excess hours. The board's contract states that the administrator was to

provide 125 base service hours per month, for which she was paid \$1,875 per month. The contract also requires that reimbursement for all time spent in excess of the base load be paid according to the type of service. For example, the contract states that a word processing task would be billed at \$6 per hour. Furthermore, the contract requires that all rate increases be submitted to the board for prior approval.

We found that during FY 92-93, the board paid \$3,300 for all excess hours at the rate of \$15 per hour. According to a board official, the board authorized this change in rate. However, we were unable to find written documentation of board approval.

Recommendations

- 26 The Department of Labor, Licensing and Regulation should ensure that the Board of Registration for Geologists reviews the records of all tasks completed and hours spent conducting board business prior to approving payment to the contracted administrator for excess services.
- 27 The Department of Labor, Licensing and Regulation should ensure that amendments to any contracts for the Board of Registration for Geologists are in writing and signed by appropriate officials.

Approval of Board Expenditures — Board of Registration for Geologists

We also found that the board has not implemented proper controls over the payment of board expenditures. The board's contract with its administrator states that all vouchers and payments will be signed by a designated board official. The contract also states that expenses incurred by the administrator will be accompanied by appropriate receipts or supporting documents which shall be provided to the board prior to payment by the board.

A member of the board reviewed expenditures and signed vouchers until he retired in 1992. Since that time, the contracted administrator and staff have routinely signed all vouchers, including those payable to themselves. A board official stated that the board has authorized the contractor to sign all vouchers.

According to an official with the State Auditor's office, it is inappropriate for a contractor to sign vouchers for the board. All vouchers should be

signed by a board member. In the event that a board member is unable to sign the vouchers in person, the vouchers should be mailed to the designated board member.

We also found no evidence that the board approves expenses prior to payment. The board's review of board expenditures is conducted when the board is provided a printout listing all vouchers that were paid the preceding month.

The geology board has not implemented the sound contract management controls necessary to ensure that payments for services are warranted.

Recommendation

28 The Department of Labor, Licensing and Regulation should ensure that a member of the Board of Registration for Geologists or other appropriate official signs all vouchers for payments, thus ensuring prior approval for board expenditures.

Testing Consultant Contract — Board of Registration for Geologists

In our 1991 report, we found problems with the board's management of its testing consultant contract. The board had acquired the services of the consultant through an inappropriate sole source procurement, had not maintained a written contract, and had paid the consultant in full before services were completed.

In April 1992, the board acquired the services of another testing consultant to complete the work of the prior consultant and executed three written contracts for \$1,000 each. However, in addition to the \$3,000 paid in accordance with the contracts, the board made one additional payment of \$1,000 to this consultant, for a total of \$4,000 from April 1992 to January 1993. We found no evidence that the additional payment was made in accordance with a written contract.

In our previous audit, we recommended that the board consult with the Division of General Services about appropriate procedures to obtain consultant services. According to board officials, they have not done so.

Recommendation

- 29 The Department of Labor, Licensing and Regulation should ensure that the Board of Registration for Geologists uses appropriate procedures to obtain consultant services as needed.
-

Timely Deposits — Board of Registration for Geologists

Prior audits have consistently found that the Board of Registration for Geologists did not deposit receipts in a timely manner. Section 11-5-210 of the South Carolina Code of Laws states all revenues and incomes "... must be remitted to the State Treasurer as collected when practicable, but at least once each week." In our 1991 audit, we found from July 1990 to March 1991, the board's deposits were an average of 48 days apart.

The State Auditor's office report for FY 91-92 found that the problem had not been corrected. Our review of the board's deposits for FY 92-93 indicate that the board has improved in the timeliness of its deposits. However, the board still has not complied with statutory requirements for timely deposits.

We reviewed all deposits made from July 1992 through December 1993, and found that the board had made 52 deposits, an average of 10 days apart. We also found that in 22 instances (42%), there was at least one entire work week where no deposit was made. For example, in January 1993, 8 checks that totaled \$280 were held 12 days before being deposited.

Depositing revenue when received is a good business practice which is in the state's best interest.

Recommendation

- 30 The Department of Labor, Licensing and Regulation should ensure that the Board of Registration for Geologists makes deposits in accordance with state law.

The Licensing Process

We found that three boards did not adequately ensure that applicants for licensure complied with statutory requirements to receive licenses. The Manufactured Housing Board did not require that all applicants demonstrate financial responsibility, while the Environmental Certification Board and the Board of Long Term Health Care Administrators did not require proof of high school graduation and/or work experience.

In addition, we recommended that the Residential Builders Commission review its application materials to ensure the accuracy of information. Finally, we reviewed the adequacy of surety bonds required by the Manufactured Housing Board.

Proof of Financial Responsibility — Manufactured Housing Board

The Manufactured Housing Board has not ensured that all applicants comply with requirements for licensure. Regulation 19-425.4 requires applicants for a manufacturer or dealer license to demonstrate financial responsibility by furnishing financial statements, articles of incorporation, and letters of reference. This requirement has been in effect since May 1990.

We reviewed 25 manufacturer and dealer files. We found that the board obtained only 2 financial statements and no letters of reference for 15 businesses that were licensed since 1990. According to a board official, a company may expand its business in order to serve a larger area by acquiring additional locations. If the parent company was licensed prior to 1990, the individual dealer or manufacturer was "grandfathered in" and not required to supply this information.

We found that over a three-year period, 43 licensees went out of business and had claims filed against their surety bonds (see p. 60). If the board does not enforce the requirements for granting licenses, it is not adequately ensuring that all licensees have the financial responsibility to protect consumers.

Recommendation

31 The Manufactured Housing Board should ensure that applicants comply with Regulation 19-425.4 which requires that they furnish articles of incorporation, financial statements, and letters of reference.

**Verification of
Graduation and Work
Experience —
Environmental
Certification Board**

A high school degree or the equivalent has been required for certification of water and wastewater operators since June 26, 1992. However, the board does not require verification of graduation. It relies instead on self-reporting by the candidate in the application.

In addition, experience as an operator is required for promotion at each level of water and wastewater certification, up to a total of four years experience for certification at the "A" level. In most circumstances, the board does not require proof of work experience but relies instead on the licensee's self-reporting.

Recommendation

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- 32 The Environmental Certification Board should require verification that water and wastewater operators are high school graduates and that they have obtained the work experience needed for promotions.
-

**Proof of Graduation —
Board of Long Term
Health Care
Administrators**

A high school degree or the equivalent has been required for licensure of residential care facility administrators since January 1, 1993. However, the Board of Long Term Health Care Administrators does not require verification of graduation. It relies instead on information stated by the candidate in the application. In contrast, nursing home administrators, who are normally required to be college graduates, must submit official college transcripts with their applications.

Recommendation

-
- 33 The Board of Long Term Health Care Administrators should require applicants for licensure as residential care facility administrators to submit proof of high school graduation.

Code Manual Information — Residential Builders Commission

The application materials for the residential builder's license contain misleading information regarding the purchase of building code manuals. According to the commission director, two of these books, *Council of American Building Officials One and Two Family Dwelling Code* and *National Fire Protection Association 70-A Electrical Code for One and Two-Family Dwellings*, are the only manuals applicants may use when taking the residential builder's open-book examination. Materials that the commission sends applicants contain a list of books sold by a private provider. However, the provider's list contains misleading and erroneous information. One book that is highlighted as required for the examination on the provider's list is not required for the examination.

Also, the inclusion of the provider's book list may suggest that this is the only place where the books can be purchased. This is not the case. We interviewed various vendors and found that the books can be ordered from three book suppliers. Furthermore, we contacted the bookstores of Midlands, Orangeburg-Calhoun, Trident, and Greenville Technical Colleges and found that these code manuals are routinely ordered for the builder's exam preparatory classes, and are available for purchase by the general public. In some cases, the books could be obtained at a lower cost than from the provider whose list is sent in the application packet.

Recommendation

-
- 34 Application materials sent by the Residential Builders Commission should list more than one source for the code manuals recommended for study. The commission should ensure that source lists correctly identify the books that may be used while taking the examination.

Surety Bonds — Manufactured Housing Board

We reviewed the adequacy of and need for the surety bonds required for licensees of the Manufactured Housing Board. Section 40-29-120 of the South Carolina Code of Laws requires all persons applying for a manufactured housing license to furnish a corporate surety bond.

In our 1988 audit, we recommended that bonds for manufacturers and dealers be increased and bonds for salespersons and manufacturers' representatives be reduced or eliminated. In 1989, the General Assembly increased the bond requirements for manufacturers and dealers (see Table 4.1).

**Table 4.1: Surety Bond
Requirements**

Licensee	1988 Amount	1988 LAC Recommendation	Current Amount ^a
Manufacturer	\$25,000	\$75,000	\$75,000
Dealer	\$10,000	\$25,000	\$15,000
Salesperson	\$10,000	\$5,000	\$10,000
Manufacturer Representative	\$10,000	Elimination	\$10,000

^a Bond amount in effect since June 1989.

In our current review, we did not find substantial evidence that the bonds for dealers and manufacturers were inadequate to protect the consumer. According to a board staff member, a claim is placed against a bond when a business has closed. We identified 43 dealers or manufacturers, out of 370 licensees, who had claims filed against their bonds from FY 90-91 through FY 92-93. We found that there were only seven cases where the bond was not sufficient to cover amounts owed to consumers.

We also found that consumers have filed claims against dealers and manufacturers, but not salespersons or manufacturer representatives. According to a staff member, there have been no claims filed against these bonds because the dealers and manufacturers are responsible for their employees.

In February 1994, the Manufactured Housing Board voted to support legislative proposals that included provisions to increase the dealer bond from \$15,000 to \$25,000, eliminate the bond requirement for the salesperson, and establish a recovery fund. A recovery fund would compensate consumers for claims against licensees. No legislation had been introduced as of April 1994. According to board officials, the National Commission on Manufactured Housing has recommended that recovery funds should be required for each state.

Recommendations

- 35 The General Assembly may wish to consider amending §40-29-120 of the South Carolina Code of Laws to eliminate the bond requirements for salespersons and manufacturer representatives.
- 36 The Manufactured Housing Board should study and evaluate proposals for establishing a state recovery fund, and recommend appropriate provisions to the General Assembly, if warranted.

Written Policies and Procedures

Section 1-23-140 of the South Carolina Code of Laws requires agencies to adopt and make available written policies on the nature and requirements of all agency procedures. We reviewed the scope and nature of each board's written policies and procedures.

We found that two boards had complete written policies and procedures, one board had some outdated policies, three boards had incomplete policies, and three boards have not published or adopted written policies or procedures (see Table 4.2).

Table 4.2 Written Policies and Procedures

Board	Policies and Procedures	
Licensing Board for Contractors	Complete	
Board of Registration for Professional Engineers and Land Surveyors	Complete	
Board of Registration for Geologists	Outdated	Temporary Permits Examinations Roster Fees
Manufactured Housing Board	Incomplete	No Policies for Examinations
Residential Builders Commission	Incomplete	No Policies for: Licensing Examinations Reciprocity
Environmental Certification Board	Incomplete	No Policies for Complaints
Real Estate Commission	Not Adopted	
Board of Long Term Health Care Administrators	Not Adopted	
Real Estate Appraisers Board	Not Adopted	

Recommendations

- 37 The Department of Labor, Licensing and Regulation should ensure that each licensing board adopts and makes available written policies and procedures for all functions and programs administered by the board.
- 38 The Department of Labor, Licensing and Regulation should ensure that each licensing board's written policies conform to the board's statutory requirements and current practice.

Public Participation

Determine the extent to which the agencies have encouraged the participation of the public and, if applicable, the industries they regulate.

In order to evaluate public participation issues, we reviewed each board's statutes and regulations and minutes of board meetings. We also determined that each board was listed in the city and state government telephone directories.

We found that all the boards under review are required by statute to hold regular or a certain number of meetings per year, post their agendas at least 24 hours in advance of the meetings, and have at least one public member on the board. All of the boards complied in these areas.

We did identify areas where public participation could be improved by some of the boards. These issues are discussed below.

Public Membership

Public members are appointed to regulatory boards to ensure public input in board activities and to provide an additional perspective in board decision making. The appointment of a current or former licensee of the regulated profession, instead of a member from the general public, may limit public participation in policy making.

We found that three boards had public members who were either currently licensed or formerly licensed by the board. Also, a public member on another board had attended only one meeting in three years.

Manufactured Housing Board

Section 40-29-30 of the South Carolina Code of Laws provides for the appointment of two public members to the Manufactured Housing Board. One public member must not be associated with any of the other industries represented on the board other than as a minority stockholder; the second member is to reside in a manufactured home.

As of March 1994, only one of the two public members had been appointed to the board. This member, who currently resides in a manufactured home, is a former manufactured home dealer. He also served as secretary and then chairman of the South Carolina Manufactured Housing Institute, a trade association. He was appointed in April 1993 with his term to expire in June 1997.

Recommendation

- 39 The General Assembly may wish to consider amending §40-29-30 of the South Carolina Code of Laws to prohibit former licensees of the board from serving on the Manufactured Housing Board as public members.

Residential Builders Commission

Section 40-59-20 of the South Carolina Code of Laws provides for the appointment of two public members not engaged in the business of residential building to the Residential Builders Commission. One of the two public members on the commission is a former builder. This person was appointed as a consumer member in May 1993 even though his builder's license did not expire until June 30, 1993. In addition, this individual previously served on the commission as a representative for the building industry.

Recommendation

- 40 The General Assembly may wish to consider amending §40-59-20 of the South Carolina Code of Laws to prohibit former residential builders from serving on the Residential Builders Commission as public members.

**Environmental
Certification Board**

Section 40-23-20 of the South Carolina Code of Laws provides for the appointment of one member from the public at large to serve on the Environmental Certification Board.

The public member serving on the board is certified as a physical/chemical wastewater operator, a biological wastewater operator, and a water operator. He was appointed in November 1989. His term expired July 1993, but he continues to serve until a successor is appointed.

Recommendation

-
- 41 The General Assembly may wish to consider amending §40-23-20 of the South Carolina Code of Laws to prohibit current or former licensees of the board from serving on the Environmental Certification Board as public members.

Real Estate Commission

Section 40-57-50 of the South Carolina Code of Laws provides for the appointment of two public members to the Real Estate Commission. We found that one of the two public members has not regularly attended commission meetings. This public member attended only one of 29 meetings held between July 1990 and May 1993. The member's term expired in 1991 but, as allowed by statute, he continues to serve until the appointment of a successor.

Recommendation

-
- 42 The Governor's Office should appoint a new public member to the Real Estate Commission.

Board Appointments

Eight of the nine boards reviewed have at least one vacancy and/or member serving with an expired term (see Table 5.1). Board membership, as provided by statute, helps to ensure adequate representation of the regulated professions as well as the general public. Board vacancies may make it difficult for a board to obtain a quorum needed to conduct business.

Recommendation

43 The Governor's Office should ensure that appointments for board vacancies and expired terms are made in a timely manner.

Table 5.1: Status of Board
Appointments as of December
1993

Board	Number of Board Members	Board Vacancies	Expired Board Terms
Manufactured Housing Board	9	2	3
Real Estate Commission	9	0	1
Residential Builders Commission	7	0	3
Licensing Board for Contractors	8	2	3
Board of Registration for Professional Engineers and Land Surveyors	8	0	4
Environmental Certification Board	9	2	4
Real Estate Appraisers Board	7	0	0
Board of Long Term Health Care Administrators	9	0	1
Board of Registration for Geologists	5	0	2

FOIA Compliance

The Freedom of Information Act (FOIA [§30-4-80 of the South Carolina Code of Laws]) requires agencies to notify persons, organizations and news media who request notification of meetings, and to note in minutes efforts made to comply with this requirement.

Of the boards reviewed, only the Manufactured Housing Board and the Board of Long Term Health Care Administrators noted compliance in their minutes. The other boards should record their attempts to satisfy these requirements.

Also, we found that one board has taken action against licensees in violation of the FOIA. This issue is discussed below.

Real Estate Commission

The Real Estate Commission has voted in closed session on licensing and disciplinary matters in violation of the FOIA.

Section 30-4-17 of the South Carolina Code of Laws allows meetings to be closed to the public for discussion of issues to include employment, compensation and matters involving persons regulated by the public body. However, formal action, by means of voting, must be taken in open session. Since at least 1987, the Real Estate Commission has voted on licensing and disciplinary action in closed session.

Compliance with the FOIA helps to ensure that the commission's actions are accountable to the public.

Recommendation

- 44 The Department of Labor, Licensing and Regulation should ensure that the Real Estate Commission complies with the requirements of the Freedom of Information Act.

Cost of Rosters

Section 30-4-30 of the Freedom of Information Act requires that state agencies' fees for providing copies of public records not exceed the actual cost of searching for or making copies of the records.

We found that two boards have charged excessive fees for rosters of licensees and/or applicants.

Real Estate Appraisers Board

The Real Estate Appraisers Board charges excessive fees for rosters of appraisers and applicants. The board charges \$50 for a printed roster of appraisers; \$75 for a roster of appraisers on computer diskette; and \$85 for labels containing the addresses of appraisers or examination applicants. The costs to the board to generate these rosters are \$12 for a printed roster, \$17 for a roster on computer diskette and \$47 for mailing labels.

Section 40-60-65 of the South Carolina Code of Laws mandates the temporary fees to be charged for rosters until the board promulgates regulations. As of January 1994, the board had proposed regulations which included the same fees for rosters.

Recommendation

- 45 The Department of Labor, Licensing and Regulation should ensure that the Real Estate Appraisers Board promulgates regulations with charges for rosters of appraisers and applicants that reflect its actual costs.

Board of Long Term Health Care Administrators

The Board of Long Term Health Care Administrators charges \$20 for a list of nursing home and community residential care facility administrators licensed in South Carolina. According to board staff, the computer and staff time required to copy the licensee list is minimal. A charge of \$20 for this information exceeds the board's actual cost.

Recommendation

-
- 46 The Department of Labor, Licensing and Regulation should ensure that the Board of Long Term Health Care Administrators reduces the fee for lists of licensees to reflect its actual costs.
-

Notification of Press

Three boards are not notifying the press of their meetings. Although not required by law, press announcements of public meetings are free of charge and may increase public awareness and participation. The Real Estate Commission, the Residential Builders Commission and the Real Estate Appraisers Board should consider notifying the press of their meetings.

Issue (5)
Public Participation

Duplication of Services

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

For those boards that had previous sunset reviews, we updated the status of any prior duplication issues. For all of the boards, we interviewed board staff and staff at other agencies, as applicable, to determine the extent that other agencies had similar functions. In addition, where applicable, we examined the effect of duplication on program effectiveness and cost savings.

Board Regulation

We identified boards whose licensees are also regulated by other entities. We also found that both the Real Estate Commission and the United States Department of Housing and Urban Development (HUD) regulate land sales. These issues are discussed below.

Regulation of Specialty Contractors — Residential Builders Commission

In our 1988 review, we found that the Residential Builders Commission was the only agency responsible for examining and licensing residential home builders. This is still the case. However, in 1990, the commission's statutes were amended to provide for the regulation of specialty contractors (see p. 39). There is duplication in the regulation of some specialty contractors, including plumbers, electricians and heating and air installers/repairers.

The Residential Builders Commission registers these professions for work ranging from \$200 to \$17,500. Registration does not require an examination or specific educational or experience credentials. The commission investigates complaints.

The South Carolina Licensing Board for Contractors licenses electricians, plumbers, and heating and air conditioning technicians who undertake projects exceeding \$17,500. The board administers an examination.

The Municipal Association of South Carolina, a private non-profit organization representing South Carolina cities, administers a trade

certification program for electricians, heating and air installers/repairers, and plumbers who perform work up to \$17,500. The contractors must pass an examination in order to obtain certification. According to the association, this certification is recognized throughout the state. The association does not handle complaints.

Registration without an assessment of qualifications by the Residential Builders Commission is of questionable value. Further, various types of regulation for these professions by different entities may be confusing to the trades regulated and to the general public (see recommendation on p. 40).

Licensure Requirements for Highway Contractors — Licensing Board for Contractors

State laws require highway contractors to be regulated by the Department of Transportation and the Licensing Board for Contractors. As stated in our 1988 audit, the board's interpretation of these laws results in duplicative licensure requirements for some highway contractors.

State Regulation 63-300 requires persons bidding on Department of Transportation projects to meet the department's prequalification requirements. These include a financial statement, experience questionnaire and references. The Department of Transportation requires contractors to be prequalified annually and have net liquid assets of at least 15% of the project amount. (For example, to undertake a \$10 million project, the contractor must have net liquid assets of at least \$1.5 million.)

Section 40-11-150 of the South Carolina Code of Laws requires the contractor's board to issue a license "as a matter of right" to contractors who have been approved to bid on transportation projects. However, the board interprets the law to limit these contractors to Department of Transportation projects only. If a highway contractor wants to undertake other projects, he must also meet the board's requirements, which are duplicative.

We could find no legal justification for the board to issue a prequalified Department of Transportation contractor a limited or restricted license. Also, this results in unnecessary duplication. Once licensed, all contractors are subject to the board's oversight and disciplinary provisions.

Recommendation

- 47 The Licensing Board for Contractors should not restrict licenses issued under §40-11-150 to Department of Transportation projects only. Instead, these contractors should be licensed in the classification and with the bid limit for which they are prequalified by the Department of Transportation.

Registration of Land Sales — Real Estate Commission

The Real Estate Commission duplicates some functions of HUD. The commission administers the Uniform Land Practice Act which requires out-of-state developers with 25 or more lots to register prior to marketing or selling the lots in South Carolina. HUD, in enforcing the Interstate Land Sales Act, requires the registration of interstate land sales for subdivisions with 100 or more lots. According to commission staff, 24 (88%) of the 27 developers registered in South Carolina have 100 or more lots. Therefore, these developers are also required to register with HUD. In addition, South Carolina and HUD require developers to disclose similar information in registering land sales. For example, they must submit property restrictions, provisions for utilities, and financial statements.

Although South Carolina and HUD operations are duplicative to some degree, registration in South Carolina provides enforcement authority on the state level. Sections 27-29-120 and 27-29-130 of the South Carolina Code of Laws authorize the Real Estate Commissioner to issue a temporary cease and desist order and to revoke a land registration for cause. This authority may provide additional protection to consumers.

Overlapping Functions

We found some overlapping job functions with professions regulated by different boards, as discussed below.

**Related Professions —
Board of Registration for
Engineers and Land
Surveyors and Board of
Registration for
Geologists**

In 1988 and in 1991, respectively, we found that the duties and functions of the Board of Registration for Engineers and Land Surveyors and the State Board for Registration of Geologists did not duplicate those of any other state agency. However, in 1988, we identified some overlap in job functions in the professions of engineering, architecture and landscape architecture. In addition, in our 1991 review of the Board of Registration for Geologists, we found some overlap in tasks and job functions performed by geologists and engineers.

The engineers and land surveyors board and the geology board have taken action to clarify jurisdiction with each other and with boards that govern other related professions. Since 1962, the engineers and land surveyors board has had an agreement with the Board of Architectural Examiners which interprets the duties of the respective professions. In addition, Regulation 49-19 addresses overlap between the practice of engineering and landscape architecture.

In 1991, the engineering and land surveyors board and the geology board established an agreement which addressed overlap of the engineering and geology professions. According to officials of these boards, this agreement has satisfactorily addressed overlap of the professions.

Handling of Complaints

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

Generally, we reviewed the handling of complaints by the boards from FY 90-91 to FY 92-93. We did not review complaints filed with the Real Estate Commission due to ongoing investigations by the United States Department of Justice and the State Law Enforcement Division (see p. 8).

We determined whether the boards had developed policies and procedures for complaints. Also, we sampled complaints or reviewed all complaints (when less than 50) filed with the boards. Finally, we reviewed statutory requirements related to receipt, processing, and resolution of complaints.

Investigation of Complaints

We found that three of the boards had not adequately investigated complaints. The Real Estate Appraisers Board had not investigated most complaints received directly by the board. The Environmental Certification Board and the Board of Long Term Health Care Administrators had not followed up on investigations forwarded from other sources which involved their licensees.

Real Estate Appraisers Board

We reviewed complaints received by the board from January 1992 to January 1994 and found areas where improvements are needed. The board has not investigated and resolved complaints in a timely manner. Also, the board has not developed written procedures to handle complaints (see p. 61).

We reviewed 25 of 29 complaints received by the board. At the time of our review, two complaints were being reviewed by the legal office of the Real Estate Commission and two had been contracted to an independent investigator for resolution. Therefore, these four complaints were not available for our review. Most complaints involved allegedly inaccurate appraisals and were filed by consumers. When the board receives a

complaint, it writes the appraiser involved to request a verified reply to the complaint (see p. 80).

We found evidence of a complaint closure date in only 6 (24%) of the 25 cases reviewed. In one case, the file lacked complete information to determine whether the case was opened or closed. In 18 (72%) of the cases, there was no documentation that the board investigated after the appraiser responded to the complaint. On average, these complaints remained opened for 325 days without resolution.

For example, a real estate agent filed a complaint alleging the unethical conduct of an appraiser in July 1992. The board also requested and received the reply from the appraiser in July 1992. The complaint file contained no other evidence of action by the board to resolve the complaint. As of February 1994, approximately 570 days had elapsed since the complaint was received by the board.

According to board officials, complaints have not been investigated because the board did not have an investigator. These officials also stated that the investigator should be a licensed appraiser. However, according to his position description, the board's director of licensing and certification had responsibility for investigation of complaints. The director was hired in January 1992 and had experience as an investigator with the Real Estate Commission. The board hired an investigator/compliance officer in February 1994.

Complaints involving appraisers in the other southeastern states are investigated by a pool of regulatory investigators (Tennessee, Virginia), real estate investigators (Florida, Georgia, Mississippi, North Carolina), or investigators working for the appraiser board (Alabama). These states do not require their investigators to have an appraiser's license.

The board exists to protect the public welfare. This mission is not served when complaints are not investigated and resolved in a timely manner.

Recommendation

-
- 48 The Real Estate Appraisers Board should investigate and dispose of complaints in a timely manner.

Environmental Certification Board

The Environmental Certification Board has not followed up on confirmed or possible violations by licensees. In addition, the board has not developed procedures to handle complaints against licensees.

Section 40-23-120 of the South Carolina Code of Laws requires the board to investigate complaints. Further, a board policy stipulates that the board is to cooperate with the Department of Health and Environmental Control (DHEC) in investigating complaints.

DHEC inspects wells, waterworks systems, and water treatment facilities and notifies the board of its findings. From FY 90-91 to FY 92-93, DHEC forwarded to the board 48 orders which involved substantiated and possible violations regarding well drilling. According to a board official, the board did not follow up on any of the orders. Also, the board did not maintain copies of the orders.

Examples of orders submitted to the board by DHEC are as follows:

- In August 1992, a well driller was cited for improper installation of 43 wells. DHEC fined the driller \$15,000.
- An October 1992 order noted improper installation of two wells. DHEC fined the driller and requested that for a period of at least 12 months the driller notify DHEC when he drilled a well.
- A July 1992 memo cited a well driller's "continued violation of the State Well Standards."

A board official stated that the board did not have an investigator to follow up on DHEC orders. In January 1994, the board hired an investigator who is responsible for investigating all complaints, including those forwarded from DHEC.

The board exists to protect the quality of the state's water supply. When complaints are not investigated, there is less assurance that this mission is fulfilled.

Recommendations

- 49 The Environmental Certification Board should investigate complaints against licensees.
- 50 The Environmental Certification Board should develop policies and procedures to handle complaints.

Board of Long Term Health Care Administrators

The Board of Long Term Health Care Administrators has not investigated complaints involving nursing home and community residential care facility administrators. In addition, the board has not developed written policies and procedures to handle complaints (see p. 61).

Section 40-35-90 of the South Carolina Code of Laws authorizes the board to investigate complaints. Also, the board is to evaluate complaints and investigative information received from the Department of Health and Environmental Control (DHEC), the ombudsman program (the Division of Aging) of the Governor's office, and other sources.

According to board officials, the board currently refers complaints to DHEC or the ombudsman program. DHEC inspects and may take disciplinary action against long term care facilities. The ombudsman program investigates reports of alleged abuse, neglect, and exploitation of adults. DHEC and the ombudsman program forward substantiated complaints to the board. The board is to follow up on situations which may involve violations by the facility administrator.

The board has not followed up on investigative reports received from DHEC or the ombudsman program. Instead, the board has filed these reports in the applicable administrator's file and recorded receipt of the information on its computer system. From November 1990 to April 1993, the board recorded receipt of approximately 680 investigative reports.

We reviewed examples of investigative reports forwarded from outside sources as of March 1994 and found that some of the reports cited problems which warranted investigation of facility administrators. For example, in June 1992, the ombudsman program notified the board of several problems at a nursing home to include patients being moved from "place to place" and residents not having beds. In a second instance, a nursing home facility was cited for being understaffed. As of April 1994,

the board had made no attempt to investigate these incidents or to follow up with appropriate sources.

According to board officials, the board did not have an investigator to handle complaints. In addition, all members of the board were not appointed until July 1993.

The board has developed a complaint form and is currently working on written policies and procedures for the investigation of complaints. Additionally, according to the board's administrator, the Department of Labor, Licensing and Regulation (LLR) is to provide investigative services to the board in the future.

In order to protect residents at long-term health care facilities, the board should determine if complaints involve violations by administrators and take necessary action to deter future violations.

Recommendation

-
- 51 The Board of Long Term Health Care Administrators should promptly investigate complaints related to nursing home and community long term care facility administrators.
-

Administrative Procedures Act

The Administrative Procedures Act (APA [§1-23-310 *et seq.* of the South Carolina Code of Laws]) outlines requirements for notices and hearings in disciplinary cases. In this audit, we found board statutes which may be inconsistent with the intent of the APA. Also, we identified some instances where board regulations have not been amended to conform to statutory changes.

**Verified Reply to
Complaints —
Real Estate Appraisers
Board**

The Real Estate Appraisers Board requires an appraiser to submit a verified reply to a consumer's complaint. This practice may contravene the APA and the board's statute.

Section 40-60-170 of the South Carolina Code of Laws acknowledges that the APA governs disciplinary proceedings against appraisers. Section 1-23-320 of the APA, which outlines the requirements for notice and hearing in disciplinary cases, includes a provision that all parties be given an opportunity to respond and present evidence and argument on all issues involved.

The board's practice is to mail the appraiser a copy of the complaint with instructions to the appraiser to file a written reply to the complaint, under oath, within ten days. The board's form transmittal letter includes the statement, "Failure to timely and properly file your verified answer may have a detrimental effect upon your legal rights."

APA standards would allow a board to require a written response to a formal complaint issued by the board. However, it is questionable whether it would be permissible to require a written response to a complaint form completed by a consumer. In addition, to require a licensee to verify (that is, swear to the truth of) his response is not authorized by the APA.

Recommendation

-
- 52 The Real Estate Appraisers Board should discontinue its practice of requiring an appraiser to file a verified response to a consumer complaint.

Statutory Requirements for Hearing Notices — Licensing Board for Contractors

The statutes that specify the required notice for hearings conducted by the Licensing Board for Contractors need to be amended to comply with the APA.

Section 40-11-250 of the South Carolina Code of Laws provides for charges to be served on the accused "at least fifteen days before the fixed date for the hearing." This provision conflicts with §1-23-320 of the APA which requires that such notice must be at least 30 days.

In practice, the board complies with the APA requirement. Board policies and procedures require that at least 30 days notice be given to parties involved in a hearing. We found in our sample that parties were given 30 days notice in all cases for which a formal hearing was held.

Recommendation

-
- 53 The General Assembly may wish to consider amending §40-11-250 of the South Carolina Code of Laws to provide that an accused be given at least 30 days notice of a hearing.
-

Statutory Requirements for Hearing Notices — Residential Builders Commission

Section 40-59-90 of the South Carolina Code of Laws was amended, effective July 1, 1990, to require 30 days notice of a hearing instead of 15 days. Thirty days notice complies with APA requirements. However, Regulation 106-7 has not been amended to reflect this change.

Section 40-59-90 was also amended to authorize the commission to suspend or restrict licenses. Previously, the only authorized discipline was revocation of a license. Regulation 106-7 does not reflect this amendment either.

Recommendation

-
- 54 The Residential Builders Commission should amend Regulation 106-7 to conform to statutory requirements regarding hearing notices and the discipline of licensees.
-

Dismissal of Complaints — Residential Builders Commission

Complaints against builders have not been disposed of by the commission, in accordance with state law. Section 40-59-90 of the South Carolina Code of Laws states:

... charges, unless dismissed without hearing by the commission as unfounded or trivial, shall be heard by the commission in an open hearing within three months after the date on which they were preferred.

The commission only hears complaints which cannot be settled between the homeowner and the builder. In our sample of 50 complaints, we found evidence in only 2 cases that the commission heard the complaint. Both of these cases had been scheduled for a show cause hearing. A commission official stated that complaints which have been resolved are not heard by the commission. According to this official, complaint files can be closed at the discretion of an investigator, the director or the assistant director.

Recommendation

55 The Residential Builders Commission should dispose of all complaints in accordance with §40-59-90 of the South Carolina Code of Laws.

Statutory Authority for Discipline — Licensing Board for Contractors

The Licensing Board for Contractors does not have the authority to impose penalties less severe than license revocation. The board has expressed dissatisfaction with this limitation on its authority over substandard contractors.

Section 40-11-250 of the South Carolina Code of Laws states that the board shall revoke a license if, after a hearing, it unanimously votes in favor of finding the accused guilty of any fraud or deceit in obtaining his license or of gross negligence, incompetence or misconduct in his practice.

Other agencies, such as the State Board of Registration for Professional Engineers and Land Surveyors and the Residential Builders Commission, may reprimand, suspend, or refuse to renew licensees' licenses.

If the board had a wider range of options in disciplining contractors, the public might be better protected against negligent or incompetent contractors.

Recommendation

- 56 The General Assembly may wish to consider amending §40-11-250 of the South Carolina Code of Laws to allow the Licensing Board for Contractors to impose penalties other than license revocation.

Notarized Complaint Forms

The statutes of four of the nine boards reviewed require complaints to be notarized (see Table 7.1). Requiring a notarized form may discourage consumers from filing complaints and inhibit the timely resolution of complaints.

Although mandated by statute, one board has not always required notarized forms. In our review of the Licensing Board for Contractors, we found at least 4 cases in our sample of 50 complaint forms which were completed in their entirety, except for the notary signature. These cases were investigated.

In addition, we found that a policy of the Board of Registration for Professional Engineers and Land Surveyors contradicts the requirement for notarized complaints. This policy provides for the investigation of anonymous complaints and complaints initiated through a letter, telephone call, or by personal contact with a board member or staff.

Recommendations

- 57 The General Assembly may wish to amend statutes (see Table 7.1) of the Residential Builders Commission, Licensing Board for Contractors, Board of Registration for Professional Engineers and Land Surveyors, and the Board of Registration for Geologists to delete the requirements for notarized complaints.
- 58 These boards should amend their regulations to delete the requirements for notarized complaints.

**Table 7.1: Boards Requiring
Notarized Complaint Forms**

Board	Statutory Requirements	Requirement by Regulation
Residential Builders Commission	40-59-90	
Licensing Board for Contractors	40-11-240	29-11 and 29-110 (B)(1)
Board of Registration for Professional Engineers and Land Surveyors	40-22-400	
Board of Registration for Geologists	40-77-310	131-6.02

Source: South Carolina Code of Laws

Compliance With the Law

Determine the extent to which the agency under review has complied with all applicable state, federal, and local statutes and regulations.

We reviewed each board's compliance with its enabling legislation and regulations. We also reviewed compliance with selected federal and state laws and regulations. These included the federal Americans with Disabilities Act (ADA), the Administrative Procedures Act (APA), Freedom of Information Act (FOIA), and provisions on dual office holding, nepotism, and minority business procurement. Some findings that involved compliance are discussed under other issues. Discussion of other compliance issues follows.

Board Authority

We found that the Board of Registration for Geologists and the Environmental Certification Board had performed administrative functions outside of their statutory authority.

Board Member Fee Waiver — Board of Registration for Geologists

In its report for FY 91-92, the State Auditor's office found that the South Carolina State Board of Registration for Geologists had not complied with state law regarding renewal registration fees for board members. Four of the five board members must be registered geologists. The annual fee for geologists is \$65.

According to the audit report, at its August 20, 1991 meeting, the board amended its bylaws to grant board members a lifetime exemption from payment of registration renewal fees. The State Auditor found that the granting of this lifetime exemption violated state law for the following reasons:

- This exemption created another class of registered geologists (i.e., lifetime registrant) which is contrary to §40-77-230 and §40-77-290 of the South Carolina Code of Laws which provide for fees for registration and renewal.

- The exemption from renewal fees effectively increased board members' allowances for serving on the board in excess of the amount allowed by law in annual appropriation acts.

According to board officials, the board did not collect renewal fees for the registered geologists on the board for FY 92-93.

Recommendation

- 59 The Board of Registration for Geologists should comply with statutory provisions that require registration and renewal fees for registered professional geologists.

Certification of Swimming Pool Operators — Environmental Certification Board

The Environmental Certification Board is operating a certification program for swimming pool operators without statutory authorization.

The State Recreational Waters Act of 1990 (§44-55-2310 *et seq.* of the South Carolina Code of Laws) states that the Department of Health and Environmental Control (DHEC) is required to promulgate regulations, standards, and procedures necessary to protect the health and safety of the public and to ensure proper operation of public swimming pools. The act prohibits a person from operating a public swimming pool until he has obtained an operating permit from the department.

In 1992, DHEC and the Environmental Certification Board entered into a written agreement which gave the board responsibility for handling the initial certification of swimming pool operators. Under this agreement, the board is responsible for developing, administering, and grading tests; maintaining a register of operators; and charging fees for applications and tests. According to a board official, as of April 1994, the board had certified 1,353 pool operators. However, the Environmental Certification Board's enabling legislation does not authorize it to perform any role related to public swimming pools.

Recommendation

60 The General Assembly may wish to consider amending the Environmental Certification Board's enabling legislation and the State Recreational Waters Act to give the Board authority to certify public swimming pool operators.

Licensing Process

In our review of each board's administration of its licensing program, we identified compliance issues for three boards. The Board of Long Term Health Care Administrators did not take adequate action to ensure that some applicants were "... of reputable and responsible character." The Environmental Certification Board and the Board of Registration for Professional Engineers and Land Surveyors had licensure requirements that did not agree with statutory provisions.

Licensees with Criminal Records — Board of Long Term Health Care Administrators

In our random sample of 131 community residential care facility administrators (RCFA) licensure files, we found 3 individuals who stated on their applications that they had been convicted of a crime other than a traffic violation. These individuals were licensed, and we found no evidence that the board made inquiries into these cases. We do not know how often this may have happened among the initial RCFA licensees. According to board officials, the cases we identified "slipped through" during the two-month period when over 500 applicants were licensed for the first time.

In our sample, we also found an individual whose license renewal form indicated she had been disciplined by another professional licensing board. Her license was renewed and we found no evidence of board inquiry.

The licensure statute requires that all applicants "be of reputable and responsible character." It also allows license revocation or other discipline of a licensee for:

Conviction of . . . a felony . . . or any crime involving the safety, health, or welfare of a resident of a nursing home or community residential care facility, or any other crime involving moral turpitude.

The board does not know the nature of the criminal violations or the substance of the disciplinary proceedings against these residential care administrators. It therefore cannot judge whether these licensees represent a threat to the health, safety, or welfare of the residents of their facilities.

An amendment to the board's statute has required SLED fingerprint checks of all individuals licensed since June 11, 1993. Among the recent licensees in our sample, we found evidence that if applicants have criminal records, the board now reviews the cases and obtains information about the nature of the violations before licensing the individuals.

Recommendation

-
- 61 The Board of Long Term Health Care Administrators should review all files of RCFAs licensed prior to the institution of the mandatory SLED fingerprint check. The board should make appropriate inquiry and follow up on all cases where applicants stated they had been convicted of a crime or disciplined by another licensing board.
-

Unauthorized Fees — Environmental Certification Board

The South Carolina Environmental Certification Board has assessed a fee for non-residents that exceeds the amount authorized by statute.

Section 40-23-130 of the South Carolina Code of Laws states that a person licensed as a operator, well driller, or percolation test technician by another state or territory with comparable requirements, upon payment of a fee not to exceed \$50, may be granted a certificate of registration by the board. However, the board charges a fee of \$70 for all out-of-state applicants. Fees charged for licensure should not exceed those authorized by statute.

Recommendation

-
- 62 The Environmental Certification Board should ensure that its fees comply with statutory requirements.
-

Required Personal References — Board of Registration for Professional Engineers and Land Surveyors

The applications for licensure required by the South Carolina Board of Registration of Professional Engineers and Land Surveyors do not conform to statutory provisions regarding the applicant's submission of personal references.

According to §40-22-280 of the South Carolina Code of Laws, applicants for engineering and land surveying registration are required to submit no fewer than five references of whom three or more are registered engineers or land surveyors. However, on most of the board's applications, persons are asked to list the names and addresses of five references, who all must be registered engineers or land surveyors. The only board application that conforms to statutory provisions is the TIER B land surveyor application. Requirements for licensure should not exceed those authorized by statute.

Recommendation

63 The South Carolina Board of Registration for Professional Engineers and Land Surveyors should modify all application forms to correspond with statutory requirements.

Real Estate Commission Statutes

We identified areas where we recommended changes to the Real Estate Commission's statutes.

Education and Research Fund

The statute establishing the Real Estate Commission's education and research fund is not in accord with appropriation act provisos or the commission's practice in using these funds.

Section 40-57-150 of the South Carolina Code of Laws states that the commission may allocate a sum of up to \$5 from each license renewal fee to the commission's education and research fund. The statute provides that these funds are to be used for the advancement of education and research for the benefit of licensees and the real estate industry. The statute also requires that the funds collected must be deposited in a special

fund by the State Treasurer to be used exclusively for the purposes provided. However, every Appropriations Act since FY 79-80 has directed the commission to remit all funds for education and research to the state's general fund.

In addition, the commission has received an annual appropriation for education and research which has been less than the amount collected by the commission for that purpose. For example, according to a board official, in FY 92-93, the commission's education and research allocation from the renewal fees was approximately \$105,000, but the General Assembly appropriated \$58,020 to be used for education and research.

Every appropriation act since FY 80-81 has provided that all funds appropriated to the commission for research and educational projects shall be expended for the purpose intended. However, the commission has not always used its appropriation for education and research projects. For example, according to a board official, in FY 92-93, the commission spent \$17,325 for education and research, used \$33,000 for the commission's budget reductions mandated by the budget and control board, and lapsed \$7,675.

The Real Estate Commission has used education and research funds to sponsor continuing education for real estate professionals. The commission staff stated that since continuing education will become mandatory beginning in July 1994, there will be other sources available to fund continuing education courses. As a result, the need for the designated education and research fund should be reevaluated.

Recommendation

- 64 The General Assembly may wish to consider amending §40-57-150 of the South Carolina Code of Laws to delete provisions for the education and research fund or modify provisions to reflect current legislative intent.

Vacation Time Sharing Plans Act

In our 1988 audit, we recommended that the Vacation Time Sharing Plans Act be reviewed and updated. We suggested that the Real Estate Commission conduct a study of the act and make recommendations for changes to the General Assembly. The commission has not recommended changes for consideration by the General Assembly.

In the 1988 audit, we identified six areas that should be reviewed:

- The cancellation period of four days may not be sufficient to allow purchasers adequate time for reconsideration.
- The time sharing law did not adequately address the reselling of individual time sharing units.
- The separate time sharing sales license may not be necessary.
- The requirement that multiple ownership time sharing salesmen hold a regular real estate license was inconsistent with the requirement that other time sharing salesmen must hold only a time sharing sales license.
- The act did not require a completion bond for time sharing projects under construction.
- The registration fee for time sharing projects may not be adequate to cover the cost of regulation.

A 1993 amendment to the Vacation Time Sharing Plans Act did not address these issues. According to a commission staff member, the commission is working on a draft that would address many of the issues we identified, as well as other issues that have emerged with this changing industry.

Recommendation

65 The South Carolina Real Estate Commission should make recommendations to the General Assembly for changes needed in the Vacation Time Sharing Plans Act.

Vacation Time Sharing Recovery Fund

In 1988, we found that the Vacation Time Sharing Recovery Fund, administered by the Real Estate Commission, may not be necessary. We recommended that the General Assembly consider eliminating the fund and that the commission study the need for implementing a general recovery fund to cover all real estate claims. We reaffirm this recommendation.

Section 27-32-200 of the South Carolina Code of Laws established the time sharing recovery fund to allow consumers to recover up to \$5,000 in losses incurred through harmful actions of time sharing licensees. Time sharing licensees pay \$25 each year to support the fund. The number of licensees paying into the fund has decreased from an average of 354 in FY 88-89 to 167 in FY 92-93. In addition, the fund has increased from \$114,600 in March 1988 to \$159,000 in January 1994. No payouts have been made from the fund since its establishment in 1981.

South Carolina is the only southeastern state that has a separate time sharing recovery fund. Thirty-two states, including five southeastern states (Alabama, Florida, Georgia, North Carolina and Virginia), have a general recovery fund which allows consumers to recover losses incurred through fraudulent actions of real estate licensees. In 1992, these five southeastern states paid a total of \$854,725 from their recovery funds to 99 consumers, an average of \$8,600 to each consumer.

According to an agency official, a general recovery fund for all real estate claims would be more useful. If the time sharing recovery fund were eliminated, the accumulated funds could be used to start a general recovery fund.

Recommendations

-
- 66 The General Assembly may wish to consider amending §27-32-200 of the South Carolina Code of Laws to eliminate the Vacation Time Sharing Recovery Fund.
 - 67 The General Assembly may wish to consider amending Title 40, Chapter 57, of the South Carolina Code of Laws to authorize the Real Estate Commission to create a general recovery fund.

Statutory Definition of Real Estate Profession

The Real Estate Commission's statutes contain language that is confusing and inconsistent with current practice. Section 40-57-20 of the South Carolina Code of Laws states that it is unlawful for any person to act as a real estate broker, counsellor, real estate salesman, property manager, or real estate auctioneer without first having obtained a license issued by the Real Estate Commissioner. However, the commission issues licenses for only three classifications: real estate salesman, real estate broker, and property manager.

According to a commission staff member, a person auctioning real estate has to be licensed as a real estate salesman or broker. There is not a separate license for a real estate auctioneer. He also indicated that the terms "counsellor" and "auctioneer" could appropriately be deleted from the commission's statutes and regulations.

Recommendation

68 The General Assembly may wish to consider amending Title 40, Chapter 57, of the South Carolina Code of Laws to delete references to auctioneer and counsellor as separate license categories of the Real Estate Commission.

Promulgation of Regulations

In this audit, we identified some instances where board regulations have not been updated to conform to statutory changes and other areas where board policy that affects the public has not been put in regulations as required by the Administrative Procedures Act (APA).

Regulations for Alarm Businesses — Licensing Board for Contractors

The Licensing Board for Contractors has not updated regulations for alarm businesses to conform to statutory changes. The Regulation of Burglar Alarm System Businesses Act of 1986 (§40-79-10 *et seq.* of the South Carolina Code of Laws) was amended, effective January 1, 1993, to include fire alarm systems. However, the board's regulations have not been amended to conform to the statutory changes. For example, the current regulations require applicants to provide a \$5,000 surety bond. This requirement was deleted from §40-79-50 of the Burglar Alarm System Businesses Act in 1987.

Also, fire alarms have not been added to the regulations for alarm businesses. Therefore, the national fire alarm exam that is currently required by law is excluded from the existing regulations.

Recommendation

- 69 The Licensing Board of Contractors should amend its regulations to conform with amendments to the Burglar Alarm System Businesses Act (§40-79-10 *et seq.* of the South Carolina Code of Laws).

Licensing Requirements — Board of Long Term Health Care Administrators

The Board of Long Term Health Care Administrators has not promulgated regulations specifying the criteria used to determine if an applicant is eligible for licensure as a nursing home administrator. Section 40-35-30(B)(4)(c) of the South Carolina Code of Laws provides that candidates without a college degree may be eligible for licensure through "... a combination of education and experience acceptable under regulations promulgated by the board" The board allows two years of appropriate experience to be substituted for each year of college required. However, the board has not promulgated regulations detailing this policy.

Recommendation

- 70 The Board of Long Term Health Care Administrators should promulgate regulations stating the board's policy for evaluating the experience and education of nursing home administrator applicants.

**Certification
Requirements —
Environmental
Certification Board**

The Environmental Certification Board has not promulgated regulations specifying the criteria used to determine if an applicant is eligible for certification as a water or wastewater operator.

Section 40-23-90 of the board's enabling legislation provides that:

. . . each applicant shall complete successfully the requirements prescribed by the regulations of the board for the type of certification applied for.

Board Regulation 51-8(B) states:

An applicant's education, both degree-related and non-degree-related, may be considered by the Board in determining whether the applicant meets the experience requirements for certification.

The board allows 15 semester hours of appropriate college courses to be substituted by applicants for each 6 months of experience required for promotion beyond the trainee level. However, the board has not promulgated regulations detailing this policy.

Recommendation

71 The Environmental Certification Board should promulgate regulations stating its policy on accepting education in place of experience for certification of water and wastewater operators.

**Amendment of
Regulation —
Environmental
Certification Board**

According to Regulation 51-16, the Environmental Certification Board's rules and regulations may be amended at any regular or special meeting by two-thirds majority of the members present. This is in conflict with the South Carolina Administrative Procedures Act [APA (Section 1-23-110 *et seq.* of the South Carolina Code of Laws)] which requires state agencies to notify the General Assembly of proposed changes which would affect the general public and to give public notice in the State Register.

A board official stated that the board's current regulation refers to the board's initiation of a change to a regulation. He said that the board has always followed APA procedures to amend its regulations.

Recommendation

- 72 The Environmental Certification Board should repeal Regulation 51-16, which allows board members to amend board rules and regulations.
-

Continuing Education Requirements — Board of Registration for Geologists

The South Carolina Board of Registration for Geologists changed continuing education requirements without first amending the regulation which governs continuing education. According to board Regulation 131-3.06, registered geologists must obtain six continuing education units (or 48 contact hours) in geology per biennium in order to renew their licenses.

In June 1993, the board voted to lower its continuing education requirements to 32 contact hours per biennium. The board has begun implementing the 32 hour requirement and has published this requirement in the Continuing Education Guidelines that are sent to registrants. However as of January 1994, the board has not proposed amendments to its regulations for approval by the General Assembly.

Recommendation

- 73 The South Carolina Board of Registration for Geologists should make any changes to continuing education requirements by amending its regulations accordingly. Prior to amendment, the board should enforce current regulations.

Americans with Disabilities Act (ADA)

The federal Americans with Disabilities Act of 1990 (ADA) prohibits discrimination by public entities on the basis of disability. According to the ADA:

- Public agencies should notify applicants on how to ask for assistance.
- A board or commission may not recoup from disabled persons the cost of making available necessary assistance.
- Board meetings and examinations must be accessible.
- Boards or commissions should review and modify any policies or practices that may not comply with ADA.

We reviewed each board's policies and procedures and found that the Real Estate Commission was the only board that notifies applicants on how to ask for assistance needed because of a disability. For example, the following statement is placed on each application that is sent to potential licensees:

Check here if you feel you are eligible under the Americans with Disabilities Act (ADA) for special accommodation in taking this examination. You must complete and return a "Disability Accommodation Request Form" which will be mailed to you. If accommodation is not requested in advance, availability of accommodation on-site is not guaranteed.

While most of the boards stated that they have provided or will provide assistance by request, the Licensing Board for Contractors and the Manufactured Housing Board have adopted written policy statements to comply with the act. It is important that all licensing boards take appropriate action to assure full compliance with the ADA.

Recommendation

74 The Department of Labor, Licensing and Regulation should ensure that all licensing boards take appropriate action to comply with the federal Americans With Disabilities Act. Specifically, boards or commissions:

- Should notify applicants on how to ask for assistance;
- Should not recoup from disabled persons the cost of making necessary assistance available;
- Assure that board meetings and examinations are accessible; and
- Review and modify any policies or practices that may not comply with ADA.

Roster Publication Requirements

We identified three boards that did not publish the roster or register of licensees mandated by the board's statutes or regulations. We found that the Board of Registration for Professional Engineers and Land Surveyors and the Board of Registration of Geologists had not published a roster since 1990 or 1991, respectively, while the Environmental Certification Board did not publish a register of applications that is required by state law.

Roster — Board of Registration for Professional Engineers and Land Surveyors

According to §40-22-170 of the South Carolina Code of Laws, the Board of Registration for Professional Engineers and Land Surveyors is required to publish a roster or roster supplements each year, which shows the current names and places of business of all professional engineers and professional land surveyors. However, the board has not published a roster or a supplement since FY 90-91. According to board officials, funds have not been available to publish a roster or supplement, and they will publish a roster in early 1994.

**Roster —
Board of Registration for
Geologists**

According to §40-77-130 of the South Carolina Code of Laws, the South Carolina Board of Registration for Geologists is required to publish a roster each August. This roster shows the names and places of business of all registered professional geologists. However, the board has not published a roster since FY 91-92. According to board officials, the board is considering changing the publication date of the roster to April instead of August each year.

Recommendation

75 The South Carolina Board of Registration for Professional Engineers and Land Surveyors and the Board of Registration for Geologists should comply with statutory provisions for the publication of their rosters.

**Register of
Applicants —
Environmental
Certification Board**

The Environmental Certification Board does not have a register of applications that complies with state law.

Section 40-23-50 of the South Carolina Code of Laws provides that the board shall keep a register of applications for certificates of registration showing the following information: 1) date of application, 2) name and qualification, 3) place of business, 4) place of residence, and 5) whether the application was granted or refused.

The board's current roster contains the name and location of each applicant, as well as the person's licensure history. The board also has lists of applicants that are submitted at each board meeting for approval of certification and promotions. However, none of these records shows the date of application, place of business or residence, and whether the application was granted or refused. While the board can provide this information upon request, it is not in the format outlined in the board's law.

Recommendation

76 The General Assembly may wish to consider amending §40-23-50 of the South Carolina Code of Laws to delete the requirements for a separate register of applications.

Appendices

Appendices

Board Revenues, Expenditures, and Appropriations

Manufactured Housing Board FY 88-89 Through FY 92-93

	FY 88-89	FY 89-90	FY 90-91	FY 91-92	FY 92-93
Revenues					
License Fees	\$79,823	\$111,321	\$128,718	\$155,342	\$141,784
HUD Fees	\$129,576	\$136,404	\$155,750	\$126,546	\$149,427
Miscellaneous	\$14,595	\$18,755	\$14,585	\$18,291	\$43,665
Total	\$223,994	\$266,480	\$299,053	\$300,179	\$334,876
Expenditures					
Personal Services	\$196,038	\$216,451	\$250,889	\$249,691	\$248,467
Other Operating Expenses	\$115,068	\$108,876	\$107,941	\$96,333	\$95,707
Employee Benefits	\$43,128	\$49,784	\$60,682	\$63,783	\$70,526
Total	\$354,234	\$375,111	\$419,512	\$409,807	\$414,700
State Appropriation					
Total	\$332,167	\$330,281	\$334,870	\$362,609	\$351,492
Percent of Revenue/ Appropriation	67%	81%	89%	83%	95%

Source: State Budget and Control Board

Appendix A
Board Revenues, Expenditures, and Appropriations

Real Estate Commission
FY 88-89 Through FY 92-93

	FY 88-89	FY 89-90	FY 90-91	FY 91-92	FY 92-93
Revenues					
License Fees	\$1,559,110	\$1,505,973	\$1,718,925	\$2,029,314	\$2,137,858
Registration and Renewal Fees	\$30,850	\$31,710	\$27,650	\$44,150	\$43,713
Miscellaneous	\$84,540	\$48,890	\$33,768	\$43,613	\$43,438
Total	\$1,674,300	\$1,586,573	\$1,780,343	\$2,117,077	\$2,225,009
Expenditures					
Personal Services	\$775,474	\$821,026	\$837,428	\$880,371	\$878,874
Other Operating Expenses	\$555,621	\$560,839	\$549,580	\$777,519	\$569,258
Employee Benefits	\$150,117	\$167,037	\$188,872	\$206,495	\$214,428
Total	\$1,481,212	\$1,548,902	\$1,575,880	\$1,864,385	\$1,662,560
State Appropriation					
Total	\$1,556,326	\$1,586,375	\$1,583,449	\$1,884,818	\$1,715,658
Percentage of Revenue/ Appropriation	108%	100%	112%	112%	130%

The Real Estate Appraisers Board is included in the figures for FY 91-92 and FY 92-93.

Sources: State Budget and Control Board and Comptroller General's office

Appendix A
Board Revenues, Expenditures, and Appropriations

Residential Builders Commission
FY 88-89 Through FY 92-93

	FY 88-89	FY 89-90	FY 90-91	FY 91-92	FY 92-93
Revenues					
License and Registration Fees	\$590,755	\$639,850	\$792,795	\$890,484	\$916,312
Exam Fees	\$122,880	\$188,735	\$151,540	\$147,125	\$131,723
Miscellaneous	\$1,863	\$1,532	\$951	\$862	\$1,075
Total	\$715,498	\$830,117	\$945,286	\$1,038,471	\$1,049,110
Expenditures					
Personal Services	\$296,939	\$342,837	\$380,792	\$462,126	\$513,241
Other Operating Expenses	\$206,800	\$200,848	\$230,410	\$290,121	\$256,980
Employee Benefits	\$59,940	\$72,618	\$80,533	\$107,845	\$126,334
Total	\$563,679	\$616,303	\$691,735	\$860,092	\$896,555
State Appropriation					
Total	\$573,142	\$625,639	\$692,225	\$938,620	\$944,631
Percent of Revenue/ Appropriation	125%	133%	137%	111%	111%

Sources: State Budget and Control Board and Comptroller General's office

Appendix A
Board Revenues, Expenditures, and Appropriations

Licensing Board for Contractors
FY 88-89 Through FY 92-93

	FY 88-89	FY 89-90	FY 90-91	FY 91-92	FY 92-93
Revenues					
License Fees	\$1,367,953	\$1,485,459	\$1,447,616	\$1,498,238	\$1,474,100
Miscellaneous	\$0	\$0	\$0	\$20	\$220
Total	\$1,367,953	\$1,485,459	\$1,447,616	\$1,498,258	\$1,474,320
Expenditures					
Personal Services	\$176,302	\$180,509	\$186,110	\$183,215	\$196,555
Other Operating Expenses	\$158,435	\$177,622	\$179,763	\$195,113	\$172,201
Employee Benefits	\$37,726	\$42,239	\$45,018	\$48,389	\$51,267
Total	\$372,463	\$400,370	\$410,891	\$426,717	\$420,023
State Appropriation					
Total	\$378,184	\$417,550	\$438,665	\$456,984	\$439,097
Percent of Revenue/ Appropriation	362%	356%	330%	344%	336%

Sources: State Budget and Control Board and Comptroller General's office

Appendix A
Board Revenues, Expenditures, and Appropriations

**Board of Registration
for Professional Engineers
and Land Surveyors
FY 88-89 Through FY 92-93**

	FY 88-89	FY 89-90	FY 90-91	FY 91-92	FY 92-93
Revenues					
License Fees	\$331,178	\$415,266	\$431,705	\$502,911	\$519,473
Application and Exam Fees	\$83,645	\$100,978	\$120,219	\$136,085	\$114,130
Miscellaneous	\$7,696	\$11,119	\$10,253	\$3,855	\$12,534
Total	\$422,519	\$527,363	\$562,177	\$642,851	\$646,137
Expenditures					
Personal Services	\$166,645	\$206,763	\$241,785	\$247,936	\$253,899
Other Operating Expenses	\$158,700	\$156,939	\$146,604	\$152,003	\$187,343
Employee Benefits	\$31,854	\$43,565	\$54,634	\$57,045	\$59,813
Total	\$357,199	\$407,267	\$443,023	\$456,984	\$501,055
State Appropriation					
Total	\$361,266	\$409,827	\$443,023	\$456,984	\$564,725
Percent of Revenue/ Appropriation	117%	129%	127%	141%	114%

Sources: State Budget and Control Board and Comptroller General's office

Appendix A
Board Revenues, Expenditures, and Appropriations

Environmental Certification Board
FY 88-89 Through FY 92-93

	FY 88-89	FY 89-90	FY 90-91	FY 91-92	FY 92-93
Revenues					
License Fees	\$155,654	\$153,357	\$162,403	\$178,814	\$182,876
Application & Exam Fees	\$69,068	\$69,858	\$102,884	\$115,904	\$122,680
Miscellaneous	\$300	\$300	\$0	\$600	\$1,588
Total	\$225,022	\$223,515	\$265,287	\$295,318	\$307,144
Expenditures					
Personal Services	\$98,726	\$104,091	\$104,994	\$103,624	\$107,060
Other Operating Expenses	\$74,884	\$68,730	\$69,573	\$62,701	\$72,030
Employee Benefits	\$20,387	\$22,960	\$25,486	\$28,308	\$31,508
Total	\$193,997	\$195,781	\$200,053	\$194,633	\$210,598
State Appropriation					
Total	\$194,054	\$197,145	\$216,544	\$198,466	\$228,176
Percent of Revenue/ Appropriation	116%	113%	123%	149%	135%

Sources: State Budget and Control Board and Comptroller General's office

Appendix A
Board Revenues, Expenditures, and Appropriations

**Board of Long Term Health
 Care Administrators
 FY 90-91 Through FY 92-93**

	FY 90-91*	FY 91-92	FY 92-93
Revenues			
License Fees	\$12,563	\$30,869	\$67,350
Application & Exam Fees	\$15,050	\$18,600	\$108,420
Miscellaneous	\$5,137	\$10,495	\$16,595
Total	\$32,750	\$59,964	\$192,365
Expenditures			
Personal Services	\$38,023	\$30,100	\$65,407
Other Operating Expenses	\$15,771	\$29,910	\$23,728
Employee Benefits	\$9,398	\$6,650	\$14,795
Total	\$63,192	\$66,660	\$103,930
State Appropriation			
Total	\$69,430	\$82,036	\$106,621
Percent of Revenue/ Appropriation	47%	73%	180%

FY 88-89 and FY 89-90 were included in our 1991 sunset review of the board.

Sources: State Budget and Control Board and Comptroller General's office

Appendix A
Board Revenues, Expenditures, and Appropriations

**Board of Registration
for Geologists
FY 90-91 Through FY 92-93**

	FY 90-91^a	FY 91-92	FY 92-93
Revenues			
License Fees	\$69,077	\$67,378	\$69,225
Application & Exam Fees	\$1,275	\$3,300	\$4,455
Miscellaneous	\$750	\$300	\$10
Total	\$71,102	\$70,978	\$73,545^b
Expenditures			
Personal Services	\$770	\$245	\$490
Other Operating Expenses	\$46,986	\$54,377	\$51,344
Employee Benefits	\$0	\$0	\$0
Total	\$47,756	\$54,622	\$51,834
State Appropriation			
Total	\$58,871	\$54,693	\$52,228
Percent of Revenue/ Appropriation	121%	130%	141%

^a FY 88-89 and FY 89-90 were included in our 1991 sunset review of the board.

^b Does not include \$145 in uncollected fees.

Sources: State Budget and Control Board and Comptroller General's office

Board Fee Schedules, FY 93-94

Manufactured Housing Board Fee Schedule

License	
Manufacturer/Renewal	\$150
Retail Dealer/Renewal	\$50
Salesman/Renewal	\$25
Multi-lot Salesman/Renewal	\$50
Manufacturer's Representative/Renewal	\$25
Other	
Examination/Application	\$25
Manufactured Home Show Permit	\$100

Source: Manufactured Housing Board

Real Estate Commission Fee Schedule

License	
Broker-in-Charge	\$125
Renewal	\$63
Property Manager-in-Charge	\$125
Renewal	\$63
Broker	\$63
Renewal	\$44
Property Manager	\$63
Renewal	\$44
Sales Renewal	\$31
Examination	
Broker	\$31
Sales	\$63
Property Manager	\$31

Source: Real Estate Commission

**Residential Builders Commission
Fee Schedule**

License	
Residential Builders License/Renewal	\$100
Registration	
Residential Specialty Contractors/Renewal	\$100
Examination	
Special/Oral Examination	\$200

Source: Residential Builders Commission

**Licensing Board for Contractors
Fee Schedule**

License	
General Contractor/Renewal	\$110
Mechanical Contractor/Renewal	\$110
Bidder/Renewal	\$120
Fire Protection Sprinkler	\$250
Renewal	\$100
Burglar Alarm Business	\$250
Renewal	\$200

Source: Licensing Board for Contractors

Board of Registration for
Professional Engineers and
Land Surveyors
Fee Schedule

Application	
Professional Engineer (ABET)	\$65
Professional Engineer (non-ABET)	\$65
Renewal	\$50
Associate Professional Engineer (ABET)	\$65
Renewal	\$50
Land Surveyor (TIER A)	\$65
Land Surveyor (TIER B)	\$60
Renewal	\$50
Engineer-in-Training (senior ABET students/graduates)	\$45
Engineer-in-Training (non-ABET graduates)	\$70
Land Surveyor-in-Training	\$60
Examination	
Fundamentals of Engineer	\$40
Principles and Practice of Engineering	\$80
Fundamentals of Land Surveying	\$60
Principles and Practice of Land Surveying	\$75
State Special Land Surveying	\$40
TIER B Land Surveying	\$50
Corporations	
Certificate of Authorization	\$70
Renewal	\$45
Temporary Permits	
Professional Engineers	\$100
Corporations	\$150

Source: Board of Registration for Professional Engineers and Land Surveyors

**Environmental Certification Board
Fee Schedule**

Application	
Wastewater Treatment Plant Operator/Renewal	\$22
Water Treatment Plan Operator/Renewal	\$22
Percolation Test Technician (includes exam)	\$48
Renewal	\$34
Well Drillers (includes exam)	\$40
Renewal	\$29
Examination	
Water Treatment Plant Operator	\$22
Wastewater Treatment Plant Operator	\$22
Oral Examination	\$70

Source: Environmental Certification Board

**Real Estate Appraisers Board
Fee Schedule**

License	
Appraiser/Renewal	\$235
Certified Residential Appraiser/Renewal	\$235
Appraiser Apprentice Permit/Renewal	\$200
Appraiser Registration/Renewal	\$100
Examination	
Appraiser	\$100
Certified Residential Appraiser	\$100

Source: Real Estate Appraisers Board

**Board of Long Term Health
Care Administrators
Fee Schedule**

License	
Nursing Home Administrator	\$200
Renewal	\$175
Provisional	\$500
Initial Period	\$175
Community Residential Care Facility Administrator	\$100
Renewal	\$250
Provisional License	\$250
Initial Licensure Period	\$150
Examination	
Nursing Home Administrator	
National and South Carolina	\$250
National Only	\$175
South Carolina Only	\$100
Community Residential Care Facility Administrator	\$100

Source: Board of Long Term Health Care Administrators

**Board of Registration
for Geologists
Fee Schedule**

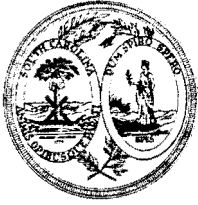
Application	
Registered Professional Geologist	\$100
Renewal	\$65
Geologist-in-Training	\$50
Renewal	\$40
Other	
Examination	\$200
Temporary Permit (six months)	\$450

Source: Board of Registration for Geologists

Appendix B
Board Fee Schedules, FY 93-94

Agency Comments

Appendix C
Agency Comments



LLR

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION

Carroll A. Campbell, Jr.
Governor
Virgil W. Duffie, Jr.
Director

June 22, 1994

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Mr. George L. Schroeder, Director
South Carolina Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Schroeder:

Following below is the consolidated response to the 1994 Sunset Review Report on the licensing boards for Contractors' Licensing, Environmental Certification, Real Estate, Geologists, Long Term Health Care Administrators, Residential Builders, Manufactured Housing, and Real Estate Appraisers.

On behalf of the Department and the boards, we appreciate your providing to us a consolidated report in view of the changes brought about by the Restructuring Act of 1993. This departmental response is comprised of the individual responses of these boards and any additional input deemed necessary by management staff. The Board of Registration for Professional Engineers and Land Surveyors has submitted a separate response which is not duplicated herein.

Several of the recommendations included in the report were already under consideration by staff of the Department of Labor, Licensing and Regulation (DLLR), Division of Professional and Occupational Licensing (POL) as a result of information received during the planning process for the implementation of restructuring requirements. These items are indicated as "Implementation in Process."

Certain recommendations are outside the scope of authority of DLLR, however, if a response was received from the board at issue, those comments are incorporated herein. If the boards provided no input and the recommendations seem reasonable, appropriate discussion will be initiated with the boards affected.

As much as possible herein, we have followed the structure of the report provided to us in addressing the issue areas.

ISSUE AREA #1: *Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.*

Restrictive Licensing Requirements and Practices

ENVIRONMENTAL CERTIFICATION BOARD

Employment Requirement: The board feels that the requirement that applicants for certification be employed at a water or wastewater treatment facility prior to certification has not been problematic for the vast majority of applicants in securing employment. The board feels that this requirement is reasonable and should not be changed.

CONTRACTORS' LICENSING BOARD

Licensure of Burglar Alarm Contractors: DLLR agrees with this recommendation.

Restrictive Licensing Laws: The board does not support the recommendation to amend §§10-11-100, 10-11-180 and 10-11-300 of the South Carolina Code of Laws (the Code) to allow contractors bidding on federally funded projects to bid without a license and to require licensure before the contract award. Implementing this change could result in costly delays in instances where the contractor cannot be licensed. It would also provide a loophole for bid withdrawal which could also result in unnecessary delays.

Annual Bidders License: The board has no opposition to amending §40-11-200 of the Code to reduce the bidders' license as a requirement for contractors. Board officials report that there have been no complaints about the fees during the past few years.

REAL ESTATE COMMISSION

Advertising by Real Estate Schools: Proposed Regulation JR5193, to take effect upon passage, and as it refers to advertising, does not contain this restriction. The proposed regulations also repeal all old ones.

BOARD OF REGISTRATION FOR GEOLOGISTS

Licensure through Endorsement: POL will review and recommend necessary changes to licensing procedures in accordance with §40-77-210 of the Code.

LONG TERM HEALTH CARE ADMINISTRATORS

Requirements for Photographs: Implementation in process.

Examinations Required for Licensure

RESIDENTIAL BUILDERS COMMISSION

Commission Examinations: DLLR will recommend that the board review its examinations to ensure that they are reliable and valid and are consistent and fair to applicants.

REAL ESTATE COMMISSION

Commission Examinations: The board and DLLR agree that this should be done and have a proposal from the University of South Carolina for the work.

BOARD OF REGISTRATION FOR GEOLOGISTS

Oral Examinations: DLLR will strongly recommend that the board amend Regulation 131-3.02 and discontinue this practice.

ISSUE AREA #2: *Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.*

Deregulation

RESIDENTIAL BUILDERS COMMISSION

Registration of Specialty Contractors: DLLR and the board agree with this recommendation

REAL ESTATE APPRAISERS BOARD

Registration of Appraisers: The board feels there is a need for the appraiser Registration Classification to help protect the integrity and soundness of real estate secured loans which may be beneath the de minimis transaction level of \$250,000. Since the majority of residential home sales in South Carolina fall beneath this threshold which does not require the services of a licensed or certified real estate appraiser, there is a need for this classification to assure that these transactions are accomplished at least in conformance with accepted appraisal standards.

MANUFACTURED HOUSING BOARD

Licensure of Manufacturer Representatives: DLLR agrees with this recommendation and will take appropriate action to have §40-29-100 of the Code amended to delete this requirement. However, the board feels that licensure of salespersons serves a valuable purpose as many individuals that have committed fraud or other crimes within the industry are denied licensure and the opportunity to further injure consumers.

BOARD OF ENVIRONMENTAL CERTIFICATION

Certification of Percolation Test Technicians: The board agrees that the certification of percolation test technicians is not necessary.

Need for Regulation

MANUFACTURED HOUSING

Licensure of Installers: DLLR and the board agree with this recommendation and will introduce legislation as soon as practicable.

ISSUE AREA #3: *Determine the overall costs, including manpower, of the agency under review.*

Revenue Requirements

CONTRACTORS LICENSING BOARD

Excess Revenue: DLLR and the board feel that the appropriation and authorization for this board should be increased in order to obtain professionally developed and validated examinations; to hire needed investigators and administrative staff; and to purchase needed materials and equipment. The board and DLLR feel this is necessary in order to adequately regulate the five areas charged to this board.

REAL ESTATE APPRAISERS BOARD

Excess Revenue: DLLR and the board are reviewing this situation and will make recommendations based on that review.

MANUFACTURED HOUSING BOARD

Insufficient Revenue: DLLR will begin the process of amending the board's regulations to implement the increased fee schedule voted upon by the board.

Travel Expenses

BOARD OF REGISTRATION FOR GEOLOGISTS

Travel Expenses: DLLR now has administrative responsibility for the Board of Registration for Geologists and will provide the oversight necessary to ensure prudent expenditures for meetings.

ISSUE AREA #4: *Evaluate the efficiency of the administration of the programs or functions of the agency under review.*

Administrative Functions

BOARD OF REGISTRATION FOR GEOLOGISTS

Payment for Excess Hours: Implementation in Process. The contract with the management agency is being terminated effective June 30. DLLR has already assumed some administrative oversight of the board's expenditures.

Approval of Board Expenditures: Implementation in Process. The contract with the management agency is being terminated effective June 30. DLLR has already assumed some administrative oversight of the board's expenditures.

Testing Consultant Contract: Implementation in Process. DLLR has already assumed some administrative oversight of the board's expenditures.

Timely Deposits: Implementation in Process. DLLR has already assumed some

administrative oversight of the board's expenditures.

The Licensing Process

MANUFACTURED HOUSING BOARD

Proof of Financial Responsibility: The board does not require owners of multiple locations to submit proof of financial responsibility for each location because it serves no purpose. Having copies of the same information in each file does not increase consumer protection and serves only to clutter files. There are appropriate cross-references for each file.

ENVIRONMENTAL CERTIFICATION BOARD

Verification of Graduation and Work Experience: The board and DLLR are in agreement with this recommendation. DLLR staff will develop appropriate administrative procedures to ensure necessary licensing requirements are met before presentation to the board for consideration.

LONG TERM CARE HEALTH CARE ADMINISTRATORS

Proof of Graduation: Implementation in Process.

RESIDENTIAL BUILDERS COMMISSION

Code Manual Information: DLLR is in agreement with this recommendation and will develop alternative resource lists and ensure the clarification of application requirements.

MANUFACTURED HOUSING BOARD

Surety Bonds: DLLR is in agreement with both recommendations and will undertake necessary preliminary activities and make appropriate recommendations to the board.

Written Policies and Procedures

BOARD OF REGISTRATION FOR GEOLOGISTS, MANUFACTURED HOUSING BOARD, RESIDENTIAL BUILDERS COMMISSION, ENVIRONMENTAL CERTIFICATION BOARD, REAL ESTATE COMMISSION, LONG TERM HEALTH CARE ADMINISTRATORS BOARD, REAL ESTATE APPRAISERS BOARD

Outdated, Non-Existent or Incomplete Written Policies and Procedures: DLLR staff has begun work with these boards to develop, update and/or complete policies and procedures and to reduce them to written form.

ISSUE AREA #5 : *Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.*

Public Membership

MANUFACTURED HOUSING BOARD

Public Membership: The board indicated that their public member brings with him a thorough knowledge of mobile homes and the industry, and have proven invaluable as a member of the board. DLLR has no comment.

RESIDENTIAL BUILDERS COMMISSION

Public Membership: DLLR has no comment and no comment was received from the board. DLLR will bring the issue to the board's attention.

ENVIRONMENTAL CERTIFICATION BOARD

Public Membership: DLLR has no comment and no comment was received from the board. DLLR will bring the issue to the board's attention.

Board Appointments

REAL ESTATE COMMISSION, MANUFACTURED HOUSING BOARD, RESIDENTIAL BUILDERS COMMISSION, CONTRACTORS' LICENSING BOARD, BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS, ENVIRONMENTAL CERTIFICATION BOARD, REAL ESTATE APPRAISERS BOARD, LONG TERM HEALTH CARE ADMINISTRATORS, BOARD OF REGISTRATION FOR GEOLOGISTS.

Board Appointments: DLLR agrees with this recommendation and will encourage necessary action.

FOIA Compliance

REAL ESTATE COMMISSION

FOIA Compliance: The board has been briefed and instructed by the Attorney General's Office regarding the requirements of FOIA. In addition, board meetings will be monitored for compliance by staff of the DLLR General Counsel's Office.

Cost of Rosters

REAL ESTATE APPRAISERS BOARD

Cost of Rosters: DLLR agrees with this recommendation and will take appropriate action through the Office of Public Information to rectify the situation.

LONG TERM HEALTH CARE ADMINISTRATORS

Cost of Rosters: DLLR agrees with this recommendation and will take appropriate action through the Office of Public Information to rectify the situation.

Notification of Press

REAL ESTATE APPRAISERS BOARD, REAL ESTATE COMMISSION, RESIDENTIAL BUILDERS BOARD

Notification of Press: DLLR agrees with this recommendation and will take appropriate action through the Office of Public Information to notify the press of meetings.

ISSUE AREA #6: *Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.*

Board Regulation

RESIDENTIAL BUILDERS COMMISSION

Regulation of Specialty Contractors: The board and DLLR agree with this recommendation.

CONTRACTORS' LICENSING BOARD

Licensure Requirements for Highway Contractors: The board takes exception to the findings and recommendations regarding the regulation of highway contractors. While the Department of Highways and Public Transportation has some requirements that are more stringent, overall, the board believes their requirements offer better protection to the private owner and general public. The board requires a written technical examination which it believes allows it to better ascertain the qualifications of a contractor before (s)he can enter into private grading and paving work in South Carolina.

REAL ESTATE COMMISSION

Registration of Land Sales: Currently DLLR administers out-of-state registrations.

ISSUE AREA #7: *Evaluate the efficiency with which formal complaints, filed with the agency concerning persons; or industries subject to the regulation and administration of the agency under review, have been processed.*

Investigation of Complaints

REAL ESTATE APPRAISERS BOARD

Investigation of Complaints: A full-time investigator has been hired. The use of a pool investigator is now available through DLLR to help with complaint backlogs. In the future, complaints will be handled expeditiously.

ENVIRONMENTAL CERTIFICATION BOARD

Investigation of Complaints: The board reports that an investigator has recently been hired and that all complaints are now being investigated.

LONG TERM HEALTH CARE ADMINISTRATORS

An investigator is available through DLLR, and will ensure that complaints are handled in a timely manner. In addition, the board's complaint committee has implemented new procedures to ensure that complaints are uniformly managed and processed.

Administrative Procedures Act

REAL ESTATE APPRAISERS BOARD

Verified Reply to Complaints: Through the Office of General Counsel, POL will review this practice and take appropriate action.

CONTRACTORS' LICENSING BOARD

Statutory Requirements for Hearing Notices: Through the Office of General Counsel's Legislative Liaison, DLLR will take necessary action toward amending §40-11-250 of the Code.

RESIDENTIAL BUILDERS COMMISSION

Statutory Requirements for Hearing Notices: Through the Office of General Counsel's Legislative Liaison, DLLR will take necessary action toward amending Regulation 106-7.

Dismissal of Complaints: DLLR is aware of the situation and through the Office of General Counsel and monitoring of the complaint process, appropriate action will be taken to rectify the problems.

Notarized Complaint Forms

CONTRACTORS' LICENSING BOARD, BOARD OF REGISTRATION FOR GEOLOGISTS, RESIDENTIAL BUILDERS COMMISSION

Notarized Complaint Forms: DLLR agrees with this recommendation and with, board concurrence, will take appropriate action toward amendment of the statute sections at issue.

ISSUE AREA #8: *Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.*

Board Authority

BOARD OF REGISTRATION FOR GEOLOGISTS

Board Member Fee Waiver: DLLR is in full agreement with this recommendation and will ensure that fees are collected in accordance with the law.

ENVIRONMENTAL CERTIFICATION BOARD

Certification of Swimming Pool Operators: The Board is currently working with the Department of Health and Environmental Control and DLLR legal staff to recommend legislation establishing the board as the authority to certify swimming pool operators.

Licensing Process

LONG TERM HEALTH CARE ADMINISTRATORS

Licensees with Criminal Records: DLLR agrees with the recommendation.

ENVIRONMENTAL CERTIFICATION BOARD

Unauthorized Fees: The board has reduced its fee for reciprocity to \$50.

REAL ESTATE COMMISSION

Education and Research Fund: The board supports not amending the Code to delete provisions for the education and research fund, but rather permitting it to maximize the funds in accord with the statute. It would be the board's intent to more widely advertise the availability of funds in the future so as to receive more proposals from which to select.

Vacation Time Sharing Plans Act: DLLR will encourage the board to make recommendation to the General Assembly for changes needed in the Vacation Time Sharing Plans Act.

Vacation Time Sharing Recovery Fund: The board is in general agreement with this recommendation but feels further study is warranted.

Statutory Definition of Real Estate Profession: DLLR and the board agree with this recommendation.

Promulgation of Regulations

CONTRACTORS' LICENSING BOARD

Regulation for Alarm Businesses: Regulations will be proposed to reflect recent changes.

LONG TERM HEALTH CARE ADMINISTRATORS

Licensing Requirements: DLLR agrees with the recommendation and will encourage the board to take necessary steps toward amending appropriate regulations.

ENVIRONMENTAL CERTIFICATION BOARD

Certification Requirements: The board has agreed to investigate the necessity for amendments regarding the substitution of education for experience requirements for certification.

Amendment of Regulation: The board does not agree that Regulation 51-16 allows the board to amend regulations.

BOARD OF REGISTRATION FOR GEOLOGISTS

Continuing Education Requirements: DLLR will encourage the board to take action leading toward amendment of Regulation 131-3.06.

Americans with Disabilities Act

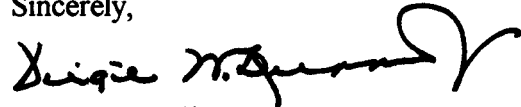
All boards will comply with the Americans with Disabilities Act.

Roster Publication Requirements/Register of Applicants

All boards will comply with publication requirements.

If you have questions or if additional clarification is needed on any point, please do not hesitate to have your staff contact Ms. Adrienne Youmans or her designated staff directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Virgil W. Duffie, Jr.", with a stylized flourish at the end.

Virgil W. Duffie, Jr.
Director

Enclosure

c: Ms. Adrienne R. Youmans
Deputy Director

South Carolina State Board of Registration for Professional Engineers and Land Surveyors



MRS. MARY M. LAW, EXECUTIVE DIRECTOR

2221 DEVINE STREET, SUITE 404

P.O. BOX 50408

COLUMBIA, SC 29250-0408

(803) 734-9166

June 22, 1994

Mr. George Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, SC 29201

Dear Mr. Schroeder:

We have reviewed the draft of your audit report of our operations. With regard to your specific recommendations and to additional questions from your staff, we submit the following:

Issue (1) Effects of Regulation (Associate Licensure for Engineers):

The audit report suggests that Section 40-22-195 unnecessarily restricts Associate Professional Engineers in their practice of the engineering profession, and that it could restrict competition within the profession. The Board of Registration takes exception to this part of the audit report and offers the following facts in support of the Board's position:

- a. The **Technology Degree** does not provide the depth or breadth of engineering education recommended by the national organization of state licensing boards for registration of engineers. This education deficit was recognized by the Commission on Higher Education and the Legislature during the session which established the title of **Associate Professional Engineer**.
- b. Provisions have been made in recently approved regulations for **Associate Professional Engineers** to obtain full licensure as **Professional Engineers** by acquiring additional education, or by passing an examination designed to show engineering knowledge equivalent to that obtained through an accredited **Engineering Degree** program. It is significant to note that these provisions were developed with assistance of the only accredited four year Engineering Technology School, South Carolina State University (SCSU), in this State.

Issue (1) Effects of Regulation (Associate Licensure for Engineers):
Continued

- c. The audit cites four states which accept the **Engineering Technology Degree** as meeting educational requirements for registration. The report, however, fails to acknowledge that these states have old laws on their books - and that these laws require no formal education beyond high school for registration as Professional Engineers. North Carolina licensure laws still permit licensure with 20 years experience where there is no higher education degree and passage of the required examination. The State of Georgia still permits engineering licensure without a college degree provided the applicant has 15 years experience and passes the required examinations. Virginia laws are similar to those of North Carolina and Georgia--but require 10 years experience where there is no post-secondary degree and passage of the required examinations. It was only recently that we learned that Alabama has started a program to raise its threshold educational requirements, the first step being, elimination in late 1992 of its provisions allowing licensure without higher education. Copies of statutes and regulations for each of these states have been provided to the LAC staff.

Lowering the education requirements for registration as a professional engineer, in the opinion of this Board, is clearly not in the best interest of the public welfare. And we believe that past legislative bodies have agreed with the Board's opinion on this issue. Nationally, the trend is toward increasing minimum education requirements because of the recognition that with increasing technological advances and complexities in engineering, a formal education in engineering is needed to best preserve the public welfare.

- d. The audit report also fails to acknowledge the trend of increasing threshold educational requirements throughout other jurisdictions in the United States. In 1991, 9 states (including South Carolina) had laws that set the **Engineering Degree** as the minimum educational requirement for licensure as a Professional Engineer. Today according to a National Council of Examiners for Engineering and Surveying (NCEES) Survey conducted in April 1993, there are 17 such states and 2 jurisdictions. It is interesting to note that Mississippi and Arkansas are two southern states which have most recently raised the threshold education for engineering registration.
- e. Of all the states that require formal education beyond high school for those seeking registration as a Professional Engineer, only 5 have set the **Engineering Technology Degree** as the minimum educational requirement. All other such states require the **Engineering Degree** as minimum education.
- f. With more than 10,000 individuals licensed in South Carolina as Professional Engineers and with an estimate of twice that number who are engineering graduates in this State and eligible for licensure, there is no basis to argue that competition is restricted within the profession. The objective should be to insure that those who are admitted to practice are competent by way of appropriate education, examination and experience to merit the public trust that is placed in

their engineering judgements and decisions. The registration law as it currently exists is structured to provide an "open gate" for those who meet minimum requirements for engineering education, examination and experience.

Issue (1) Impact of Regulation (Examination as a Condition for Renewal):

The LAC recommends that the General Assembly rewrite Code Section 40-22-350 to lengthen the time span for a late renewal to require re-examination.

While the Board of Registration has not found a need to have an individual retake an examination, the option for such a requirement provides the Board an avenue for settlement of violations.

Issue (2) Impact of Deregulation (Corporate Registration):

The audit report suggests that Corporate Registration provisions of the Engineering and Land Surveying statutes (Section 40-22-40) do not serve a regulatory function, and recommends deleting requirements for Corporate Certificates of Authorization. The Board of Registration takes exception to this audit finding, and offers the following facts in support of the Board's position:

- a. Prior to 1993, there was no statutory requirement for engineering and land surveying corporations to be registered with the Board--or that any corporate owner, officer or director be licensed with the State. And unlike many states, South Carolina does not restrict the corporate practice of engineering and land surveying to Professional Corporations.
- b. There is a regulatory function served by Code Section 40-22-40. This provision of the law places two very important regulatory requirements upon corporations, partnerships and similar type organizations. The first is a requirement that imposes upon the business entity an obligation to insure that engineering and land surveying activities in South Carolina are conducted under the responsible charge of a qualified professional licensed in this State. Secondly, there is a requirement that imposes upon the business entity an obligation to conduct its activities under the same Rules of Professional Conduct as those which apply to individual registrants.
- c. The recognition that an important regulatory function is served by the corporate registration requirement is confirmed by the filing of complaints against corporate registrants. These complaints allege violation by the cited entities of the Corporate Rules of Professional Conduct. Without the provisions of Code Section 40-22-40, there would be no way to police or sanction business entities which may be guilty of unethical corporate behavior.
- d. The report states that South Carolina statutes already require at least one corporate officer to be licensed with the Board. This is an incorrect statement. In South Carolina, it is possible for a company

to provide engineering or land surveying services even though none of its owners, officers or directors are licensed in this State. There are in fact some companies located within this State, and a number of companies located outside this State, which provide engineering or land surveying services in South Carolina but which have no owners, officers or directors who are licensed in this State.

- e. Without the provisions of Section 40-22-40, South Carolina would have no means of identifying the business entities that provide engineering or land surveying services in South Carolina, or for bringing actions against those firms which do not honor the statutes and regulations governing the practice of engineering and land surveying in this State.
- f. The requirements of Section 40-22-40 are in harmony with similar provisions for the practice of Architecture in South Carolina. And since many companies provide both engineering and architectural services, it eases the management burdens for statutes governing both professions to be in close agreement where possible.
- g. The cost for initial and renewal filing fees were set at a rather nominal amount to cover the expected expenses for time and materials to process the filings--and to meet the surcharges the Board is directed to bear. After completing the processing of this first year of renewals, the fee structure will be evaluated and adjusted, either up or down, to cover the cost for administering this program. Without these fees, the cost for monitoring corporate practice will have to be borne by the individual registrants through adjustments (increases) in those fees.
- h. Compliance with 40-22-40 by Corporate Resolution:

Following enactment of the 1993 statute, we soon found that many corporations--especially large construction companies, specialty fabricators and publically-owned corporations with engineering or land surveying operations--did not meet the "letter of the law". As we saw the matter, two avenues would exist to resolve this problem.

It would be possible to force such "non-qualifying" organizations to establish fictitious names or setup subsidiaries in order to qualify. We did not, and do not consider such burdens to be necessary.

It would also be possible to accommodate such otherwise "non-qualifying" organizations by allowing them to extend the authority of their corporate officers (as that authority applies to professional practice matters) by an appropriate Corporate Resolution. This is the method our Board considered to be most reasonable. Regulations now permit this arrangement--and we believe these regulations embody both the spirit and intent of the law.

Issue (5) Public Participation:

The Board agrees with the LAC recommendation that the Governor's office should ensure that appointments for Board vacancies and expired terms are made in a timely manner.

Issue (7) Handling Complaints (Notarized Complaint Forms):

The audit report states that the Board policy on handling complaints contradicts the requirement for notarized complaints by providing for investigation of anonymous complaints and complaints through a letter, telephone call, or by personal contact with a Board member. The Board offers the following comments:

S.C. Code Section 40-22-400 provides a vehicle for the public to directly file complaints against registrants of this Board for verifiable violations concerning fraud, deceit, gross negligence, incompetency, or misconduct.

Such complaints, unless dismissed by the Board as unfounded, trivial, or otherwise without merit, must be investigated to determine if a hearing is warranted. The provisions of this section were created to comply with the requirements of the Administrative Procedures Act, Section 1-23-10, et.seq.

The current policy of the Board to investigate informal referrals of fraud, deceit, gross negligence, incompetency, or misconduct is not in conflict with Section 40-22-400. The policy recognizes the public's reluctance to "get involved". The policy accepts a responsibility to "find out" if there is a problem and, if so, to take action on its own to deal with it. These investigations frequently result in the filing of a formal complaint. The Board does encourage written referrals of allegations, but does not ignore referrals which are not written.

We investigate all responsible allegations against the Board's registrants. The vehicle to schedule a hearing is the formal written and notarized complaint document. Section 40-22-400 allows for such a document to be submitted directly by the public. The current Board policy allows for lesser allegations to be investigated and, if warranted, a formal written and notarized complaint to be filed by the investigative staff.

To delete the requirement for notarized complaints would be to open Pandora's box and remove a very important "check & balance" to wholesale self-serving and vindictive allegations being submitted without any merit or substance.

Issue (8) Compliance with the Law (Required Personal References):

The Board will comply with the recommendation of the LAC to modify application forms to correspond with statutory requirements, but will request the General Assembly to amend the statutes to require that personal references must be registered engineers or land surveyors.

Mr. George L. Schroeder, Director LAC
June 22, 1994



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Issue (8) Compliance with the Law (Americans with Disabilities Act):

The Board has always complied with the ADA and now has in place a written policy. All applicants are provided with a copy of the ADA Board policy at the time of approval to sit for the examination.

Sincerely,



James T. McCarter, P.E.
Board Chairman

JTMcC:jt

cc: Adrienne Youmans, Deputy Director LLR
Mary M. Law, Board Executive Director

This report was published for a total cost of \$1,412.63; 335 bound copies were printed at a cost of \$4.22 per unit.